

GOVERNMENT
CORPORATIONS AND
STATE LAW

BY

RUTH G. WEINTRAUB, A.M., J.D.

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

NEW YORK

1939



Digitized by the Internet Archive
in 2026

GOVERNMENT CORPORATIONS AND STATE LAW

BY

RUTH G. WEINTRAUB, A.M., J.D.

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

NUMBER 448

NEW YORK

1939

*65133

COPYRIGHT, 1939

BY

COLUMBIA UNIVERSITY PRESS

PRINTED IN THE UNITED STATES OF AMERICA



To

MY MOTHER AND FATHER

ACKNOWLEDGMENTS

It is only appropriate at this time to express my indebtedness to Professor Arthur W. Macmahon of Columbia University for having first interested me in the field of government corporate development, and for having given so lavishly of his time and guidance during the past two years. I am also indebted to Professors Noel T. Dowling, Schuyler C. Wallace, and Lindsay Rogers, all of Columbia University, for reading the manuscript and offering valuable suggestions. To Professor Herman Finer of the London School of Economics, I owe a debt of gratitude for his aid in the analysis of the problems of the Tennessee Valley Authority. Limitations of space make it impossible to express my appreciation to each one of the many officials of government corporations and to the state agencies who have cooperated in this study. Mr. Philip Glick of the Department of Agriculture of the United States, must be mentioned separately, however, for his kindness in reading and criticizing the manuscript. Mr. Nathan D. Sobel, Counsel to the Governor of New York State should also be mentioned individually, for his generous aid. I also wish to thank the Staff of the Columbia University Law Library, for their able assistance and unfailing courtesy.

TABLE OF CONTENTS

	PAGE
ACKNOWLEDGMENTS	7
INTRODUCTION	11

PART I

THE STATE CHARTERS THE GOVERNMENT CORPORATION

CHAPTER I

The State Charters the Government Corporation	23
---	----

PART II

THE STATE SEEKS TO LIMIT THE GOVERNMENT CORPORATION

CHAPTER II

The State Seeks to Tax the Government Corporation	43
---	----

CHAPTER III

The State Seeks to Tax the Income of Employees of Government Corporations	74
--	----

CHAPTER IV

The State Regulates Government Corporations	95
---	----

PART III

THE STATE FACILITATES THE ACTIVITIES OF THE GOVERNMENT CORPORATION

CHAPTER V

The State Legislates in Favor of the Government Corporation	121
---	-----

CHAPTER VI

The State Cooperates Administratively with Government Corporations ..	146
---	-----

CONCLUSION	165
------------------	-----

TABLE OF CASES	171
----------------------	-----

APPENDICES

1. United States Housing Authority Agreement for Payments in Lieu of Taxes	175
2. Contract for a Program of Cooperative Health Work with Tennessee Valley Authority	177
3. Analysis of Government Corporations	
A. Incorporation Directly by Act of Congress	180
B. Incorporation by Federal Officers under Specific Direction of Congress	184
C. Incorporation Under State Law or Under the Laws of the District of Columbia	189
INDEX	195

INTRODUCTION

As Mr. John Maynard Keynes, the distinguished British economist, has remarked in his short monograph entitled *Laissez-Faire and Communism*:

Perhaps the chief task of Economists at this hour is to distinguish afresh the Agenda of Government from the Non-Agenda; and the companion task of Politics is to devise forms of Government within a Democracy which shall be capable of accomplishing the Agenda. . . .

I believe that in many cases the ideal size for the unit of control and organisation lies somewhere between the individual and the modern State. I suggest, therefore, that progress lies in the growth and the recognition of semi-autonomous bodies within the State—bodies whose criterion of action within their own fields is solely the public good as they understand it, and from whose deliberations motives of private advantage are excluded, . . . bodies which in the ordinary course of affairs are mainly autonomous within their prescribed limitations, but are subject in the last resort to the sovereignty of the democracy expressed through Parliament.

I propose a return, it may be said, towards medieval conceptions of separate autonomies. But, in England at any rate, corporations are a mode of government which has never ceased to be important and is sympathetic to our institutions. It is easy to give examples, from what already exists, of separate autonomies which have attained or are approaching the mode I designate—the universities, the Bank of England, the Port of London Authority . . . In the United States there are doubtless analogous instances.¹

Mr. Keynes, who wrote his monograph in 1926, was perhaps unaware of the extent to which this device for taking care of the new agenda of government was being used at that very time in the United States. Although government corporations were organized early in the history of this country, it was not until the period of the World War that they became widely

¹ New Republic, Inc., New York, 1926, pp. 59-61.

used.² At that time, the War Finance Corporation, the Food Administration Grain Corporation, the United States Housing Corporation, the United States Sugar Equalization Board, the United States Spruce Production Corporation, the United States Shipping Board Emergency Fleet Corporation, and the United States Russian Bureau, Inc., were established.³ Between the World War and the depression of 1929 a few more government corporations were created.⁴ Since the beginning of the depression, during which the government has made use of its powers to temper the adverse economic situation, the device of government corporations has been increasingly employed. From 1929 to 1938 at least thirty-eight basic federal corporations have been established.⁵ It is apparent, therefore, that twice in recent history the national government has made extensive and rapid use of government corporations and entrusted them with the spending of tremendous sums of money.

In carrying out its program the government corporation was forced to encounter and solve many difficulties. Its relation to other groups within the framework of the national government was one of the problems presented. For example, the degree of control to be exercised by the Bureau of Internal Revenue, by the Bureau of the Budget, by the Comptroller General, and by Congress had to be determined. Other problems arose because of the failure of corporate officials properly to conceive the implications of the corporate form. The remaining problems which presented themselves might at first glance seem to be inherent in any federal system, but it will be shown that they were merely results of a limited interpretation given both to our own federalism and to the corporate form.

2 Bank of North America, 1791; Panama Railroad Co., 1904; Alaska Railroad, Inc., 1915; Federal Land Banks, 1916; National Farm Loan Associations, 1916; Joint Stock Land Banks, 1916.

3 Van Dorn, Harold A., *Government Owned Corporations*, Alfred A. Knopf, New York, 1926.

4 Federal Intermediate Credit Banks, 1923; National Agricultural Credit Corporations, 1923; Inland Waterways Corporation, 1924.

5 See Appendix III, *infra*.

The purpose of the present study is to analyse only those problems which involve the effect of state law on national government corporations and the reaction of the latter on state law. Such corporations encountered all the difficulties which national agencies, corporate or otherwise, inevitably meet when they wish to project their work into the pattern of state activity. State laws had been drawn primarily for private business, and whenever the national government has undertaken similar activities (regardless of the form of organization), it has been further handicapped by the restrictions designed to regulate industry. Therefore it has protested the restrictions and urged the adjustment of state law in its favor. The assumption of corporate form for these governmental activities has only added to the complexity of the problem. It is difficult to determine whether any particular experience in state-federal relations came about exclusively because of the use of the corporate form.

Some of the problems considered will be familiar to the reader, for they have recurred repeatedly in the history of state-federal relations. One of these is the problem of tax immunity, which embraces questions of sales, motor vehicle, stamp and the other varieties of taxation. This conflict is typical of the practice of our federal system. It will be interesting to observe whether the corporate device has served in any way to solve the vexatious question of reciprocal tax immunity. Other conflicts analysed in the course of the study are of more recent origin but only few of them are inevitably bound up with the corporate form. Many questions are rather primarily linked with the nature of the specific activity undertaken by the government, so that similar problems arise under state law which perplex equally both the Federal Housing Administration which is not corporate and the Home Owners' Loan Corporation which is. Few problems in state relationships can be identified as exclusively characteristic of the corporate form. Nevertheless questions dealing with the part states play in chartering national governmental corporations, the attempted subordina-

tion of such corporations to regulations and fees required of foreign corporations, the attempted imposition of state corporate franchise taxes are all peculiar to the corporate form.

Apart from these sources of conflict, there is a more pacific picture to be drawn of experiments in cooperation in the administrative and legislative field. Here again it will be necessary to point out that the cooperation given by state administrative officials to federal corporate officials in carrying out joint programs is not unprecedented. It is new only in the sense that it causes a revision of the older concept of federalism based on a rigid doctrine of separation of powers. Again when the time comes to examine the part played by governmental corporations in urging upon states the modification of their legislative requirements, it will be shown that such procedure is not inherent in the corporate form but is rather dependent on the type of activity undertaken by the government.

The study, therefore, cannot be undertaken as a pure analysis of a governmental corporation under state law considered as an isolated phenomenon. It has to be examined rather as it most frequently presents itself: that is, inextricably bound up with the problems of our federal system and with the complications which surround any national agency when it engages in activity heretofore considered the province of private business.

It is not the purpose of this monograph to argue the merits or demerits of the corporate form for governmental activities, nor to discuss the general problems of governmental corporations. Nevertheless, it is relevant here to sketch in some background for readers unfamiliar with governmental corporate development.

It would be very gratifying to be able to prove that the corporate form was adopted during two periods of crisis in direct response to a carefully formulated Congressional plan. In 1926, Mr. Harold A. Van Dorn published the first extended analysis of the use of government corporations in the United States.⁶ This study, based on the experience of the war-time

⁶ Van Dorn, *op. cit.*

corporations, revealed nothing which would indicate Congressional concern for the theory and implications of the corporate form in governmental enterprises. Why were so many war-time activities carried on by means of corporations? Was this form adopted to provide psychic satisfaction for those "captains of industry," the dollar a year men, who were brought in to manage the war-time corporations? Was it because this was the era in which men worshipped the efficiency of modern business, which they thought could not be achieved without the use of the corporate form? Was it designed so that the stigma might be removed from the unseemly venture of the government into fields which "properly" belong to private industry? Or was it merely the natural thing to set up the convenient corporate form when a tremendous project had to be undertaken quickly and where the utmost in financial flexibility was desired?

During the second great crisis, this time an economic one, the corporate form was again used. It was employed in establishing the Reconstruction Finance Corporation, one of the first agencies set up to combat the depression. Mr. Stanley Reed, then Solicitor General of the United States, has pointed out that in this instance likewise the discussions in Congress before setting up the Reconstruction Finance Corporation failed to indicate why the corporate form was adopted.⁷ Mr. John Thurston in a recent study on governmental proprietary corporations attributed this lack of considered planning to the fact that government corporations have had their greatest growth during periods of emergency. He says: "In consequence most of the (government) corporations in the United States do not represent the results of deliberate policy long thought out but rather are emergency institutions hastily organized."⁸

⁷ "Government-Controlled Business Corporations," 10 *Tulane Law Review* 79-101 (1935) at p. 83.

⁸ *Government Proprietary Corporations in the English-Speaking Countries*, Harvard University Press, Cambridge, 1937, p. 6.

Although the United States resorted to the corporate form for governmental enterprises in what might almost be called a prolonged state of absent-mindedness, the writers of legal periodicals and monographs soon provided the government corporation with a consciously elaborated justification. They have favored the use of corporations for new governmental enterprises for one or more of the following four reasons:

First, because the government corporation can use a separate budget.⁹ Such writers consider that it has a salutary effect to permit these agencies to keep their own funds, to allow them to place profits against losses and to be able to retain surpluses. They argue that these budgetary practices ought to furnish a strong incentive towards the practice of economy. However, Mr. Patterson H. French, who, as a member of the research staff of the President's Committee on Administrative Management, interviewed many of the persons active in administering government corporations, reported that he did not find them particularly aware of "the tonic effect of separate bookkeeping. . . ." ¹⁰ Rather he found that they favored financial separation because it freed them to a certain extent from the Bureau of the Budget and the General Accounting Office. The writer of this monograph likewise discovered through interviews and correspondence that this latter advantage is the one which is most attractive to administrators.

Second, the corporation can have a financial structure consisting of capital stock plus the machinery for borrowing. Thus it is often freed from the requirement of Congressional appropriations. This advantage, so highly esteemed by many writers, will henceforth be considerably lessened since Congress has recently required the Home Owners' Loan Corporation, Federal Farm Mortgage Corporation, Federal Surplus Commodities Corporation, Export-Import Bank, Reconstruction

⁹ The reasons given were adapted from Mr. Patterson H. French, *Government Corporations*, submitted to the President's Committee on Administrative Management, October 15, 1936 (Mimeo.) pp. 54-63.

¹⁰ French, *op. cit.*, p. 55.

Finance Corporation, Electric Home and Farm Authority, Commodity Credit Corporation, Federal Savings and Loan Insurance Corporation, and the R. F. C. Mortgage Company to obtain their funds for administrative expenses from annual appropriations.¹¹

Third, the corporation can be given freedom from certain regulations and restrictions, which are normally applied to other government agencies. Corporate officials when questioned attach the greatest importance to this immunity. It is, specifically, freedom from the regulations of the civil service, the Comptroller General, and so forth. Such exemption need not be an advantage of the corporate form exclusively. Any governmental agency, whether corporate or not, might be exempted from civil service requirements, or rules as to purchasing. A recent Executive Order limits the freedom from civil service requirements which government corporations have enjoyed in the past, thereby weakening the effectiveness of this supposed advantage.¹²

Fourth, corporations may receive powers and be subjected to certain legal processes which tend to increase their efficiency. The most important of these is the power to make contracts, to sue, and liability to be sued. Any agency of the government whether corporate or otherwise, may be given power to sue and be sued, to make a contract and to do other alleged "corporate acts." The Federal Housing Administration, which is a non-corporate agency, has all these powers.

In the course of this study the term Government Corporation will be used in preference to other current designations such as Government Owned Corporations¹³ and Government Proprietary Corporations.¹⁴ The former term may be discarded as being too narrow in scope. In using Government Owned Corporations Mr. Van Dorn places his emphasis on ownership of

11 49 Stat. 1597, 1648; 15 U. S. C. A. 728 (June 22, 1936).

12 Ex. Order No. 7916 (June 24, 1938).

13 Van Dorn, *op. cit.*

14 Thurston, *op. cit.*

capital stock: whether it be completely or largely owned by the government of the United States. Such a test can be applied to only two-thirds of the agencies which are to be considered. It eliminates those corporations in which the government may not own a majority of the stock, but, while owning on occasion even less than fifty per cent, nevertheless controls a majority of the board of directors. Through the control of the board, the policy of such corporations is so assimilated to that of the rest of the government that they may deservedly be called governmental although it would be inaccurate to call them government owned. The title Government Owned Corporations would be inapplicable to still other corporations which ought to be included. There are some organizations which are neither entirely government owned nor subject to a board of directors chosen by the government.¹⁵ Nevertheless, their existence is authorized by the national government, and their work has been so closely supervised by it that they have been held to be instrumentalities of the United States in the federal courts. They may therefore be included as government corporations. The term Government Proprietary Corporations was not considered suitable for this study. The adoption of the word proprietary into the title was intended by Mr. Thurston to refer to activities of the government which are commercial as distinguished from those which are purely governmental. It will be seen that many of the governmental corporations are set up with mixed motives. The elimination of soil erosion is one of the purposes of the T.V.A., but so equally is the sale of electrical energy. The first may be considered governmental, the second proprietary. The governmental corporation exclusively proprietary in intent may be a theoretical possibility, but in practice many other functions are involved besides the proprietary one. The term is therefore too narrow to be accurately applied to many government corporations. As a legal concept the differentiation between proprietary and governmental has become so colored with unfortunate doctrine in the law of municipal corporations

¹⁵ See Appendix III for illustrations in point.

that it ought not to be imported into any other field. The term Government Corporation is adopted therefore as being the most workable. If anything it perhaps runs the danger of being too inclusive.¹⁶

Within the limits indicated a detailed discussion will now be presented of the experience of government corporations under state law, with emphasis on the problems of the more recently established governmental corporations.

16 The author has taken the liberty of excluding from the study corporations which technically conform with the definition as laid down, but whose problems are not of general interest, such as the Smithsonian Institute and the Columbia Institution for the Deaf.

PART I

THE STATE CHARTERS THE GOVERNMENT
CORPORATION

CHAPTER I

THE STATE CHARTERS THE GOVERNMENT CORPORATION

FEDERAL governmental corporations have been created in several different ways. A number were incorporated directly by act of Congress. The language used in respect to the incorporation of the T.V.A. may serve as an example:

There is hereby created a body corporate by the name of the Tennessee Valley Authority, . . . The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of the board.¹

No further action of any kind was required to bring the corporation into existence.

In a larger number of cases Congress authorized federal officers to issue charters to particular corporations after they complied with the requirements provided for in the statute. An illustration of such a situation is a Congressional act which provides:

That as soon as practicable the Federal Farm Loan Board shall divide the continental United States, excluding Alaska, into twelve districts, which shall be known as Federal land bank districts, and . . .

Upon duly making and filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate . . .²

Here again the act is so specifically worded that it is not necessary to resort to any further legal authority for incorporation.

A majority of the government corporations however were established in a third way. These were organized by federal officers who availed themselves of the incorporation laws of

1 48 Stat. 58; 16 U. S. C. A. 831 (May 18, 1933).

2 39 Stat. 362; 12 U. S. C. A. 671, 676 (July 17, 1916) with amendments.

several of the states and of the District of Columbia. The authorization was found in laws of Congress which provide that "The president is hereby authorized . . . to establish such agencies."³ The President of the United States (or other designated officer) has usually delegated this power under a particular act to some administrative official.⁴ The person thus designated then utilizes the incorporation laws of the various states or of the District of Columbia to charter the required government "agencies" to carry out the purposes of the act. The state of Delaware has received most of the business of incorporating federal agencies because of the laxity of its laws, which had already been utilized extensively by private business.^{4a}

Incorporation under state law was most frequent during the World War period and during the economic depression after 1929. The use of the corporate form per se had previously evoked occasional criticism in Congress; but it was the recent utilization of state incorporation laws, particularly those of Delaware, which increased the opposition from many sides.⁵

It is the purpose of this chapter to show that a considerable part of the adverse criticism overstates the case against such use of state authority. At the end of the analysis, the inference may be made to be sure, that it is probably sounder to use direct Congressional sources for the creation of federal governmental corporations than to accomplish this objective through state law. It will be patent by then, however, that most of the critics of the utilization of the latter method have "viewed with alarm" instead of listing and authenticating specific difficulties. The failure to specify can be explained in two ways. It is possible that the complications apprehended

3 48 Stat. 200; 40 U. S. C. A. 401 (June 16, 1933).

4 Ex. Order 6209 (July 21, 1933). Some statutes designate a particular administrative official or agency other than the President of the United States.

4^a Glick, Philip M., "The Federal Subsistence Homesteads Program," 44 *Yale Law Journal* 1324-1379 (1935).

5 79 Cong. Rec. 7135 (May 8, 1935); 79 Cong. Rec. 1548 (Feb. 6, 1935).

from the use of state authority have usually not materialized but have rather remained in the realm of theoretical possibilities. Besides, the existence of federal corporations through the aid of a locality is a concept so foreign to currently accepted notions of governmental propriety that state incorporation has been condemned in advance without complete analysis. In the few attempts thus far made to enumerate the embarrassments caused by the utilization of state law, there has been little comparative analysis to indicate whether similar problems might not have arisen even if such corporations had been organized under federal law. It is immaterial whether such incorporation occurs directly under the federal law or indirectly under the laws of the District of Columbia.

As will be shown presently, the opposition to incorporation under state laws has been vigorous but lacking in conclusive justification. Adverse criticisms have been voiced on the floor of Congress, over the radio, in periodicals and monographs.

The attack has been made from three wholly different points of view. One group was afraid that the use of state charters with broad powers would enable national officials to augment the power of the corporation beyond the authority given in the original statute. This group included two diverse elements. Among them were many of the writers in the field. An entirely different element was represented by Senator Schall in Congress and Father Coughlin over the radio.⁶ The opposition of Senator Schall and Father Coughlin was actually motivated, it would seem, by a fear of any increase whatsoever in national activities but they concentrated their attacks upon the supposed impropriety of having a national agency dependent on a state for power.

Another major group included important government officials who honestly feared that incorporation under state law might lose for the corporations certain aspects of immunity which they possess when embodied in a strictly national form.⁷

⁶ *New York Times*, sec. 1, p. 11, c. 5, February 11, 1935.

⁷ 33 Op. At. Gen. U. S. 570, 578 (1923); 37 Op. At. Gen. U. S. 437, 444 (1934); 39 Op. At. Gen. U. S. no. 35 (March 4, 1938).

It is noteworthy, however, that once incorporation was effected under state law these same officials ruled that all such corporations should resist attempts at taxation and regulation.

A third group objected to incorporation under state law because it believed that such incorporation would give rise to many conflicts of jurisdiction, taxation and regulation. One writer, for instance, hazarded a guess that conflicts of overlapping jurisdiction could be entirely eliminated merely by incorporation in the District of Columbia.⁸ It will be shown in the course of the chapter that such conflicts arise whether incorporation takes place under state law, under the law of the District of Columbia, or by more direct incorporation under federal law.

The most effective attack made on state incorporation is the argument that the state charter often has given the corporation powers far beyond the limits of the act which it purports to execute. For example, the Public Works Emergency Leasing Corporation which was chartered in Delaware and considered that it existed to carry out the purpose of Title II of the National Industrial Recovery Act, was given powers under its state charter exceeding those granted by the act of Congress. Under the state charter, it was permitted:

To undertake, construct, maintain, operate, or finance, or to aid in the undertaking, construction, maintaining, operation, and financing of publicly owned instrumentalities or facilities and any projects of the character heretofore undertaken, constructed, or carried on, either directly by public authority or with public aid, including (but without limitation) highways, parkways, buildings, canals, tunnels, bridges, docks, drydocks, dams, markets, viaducts, aqueducts, water works, reservoirs, sewage systems, airports, gas, electric-light and power plants, hospitals, refrigerating and heating systems, and in connection therewith to collect fees, tolls and other charges.⁹

⁸ Van Dorn, *op. cit.*, p. 283.

⁹ 79 Cong. Rec. 1560 (Feb. 6, 1935).

Such a charter includes a very wide range of activities. Further argument that state charters actually attempt to enlarge the powers of the original federal statute has been supported by evidence that state incorporation laws often permit an unlimited borrowing power. The charter of the Electric Home and Farm Authority authorized it to borrow without limit as to amount.¹⁰ The charter of the Commodity Credit Corporation gives it power:

To borrow money and to draw, make, accept, endorse, warrant, guarantee, transfer, assign, execute, and issue bonds, debentures, mortgages, promissory notes, bills of exchange, warrants and all kinds of obligations and nonnegotiable, negotiable, or transferable instruments without limit as to amount, and for the security of any of its obligations to convey, transfer, assign, deliver, mortgage, and/or pledge all or any part of its property or assets upon such terms and conditions as the board of directors shall authorize.¹¹

In both instances it seemed that the power to borrow was created without limit. Upon examination of the methods of controlling such corporations it appears however that the apprehended conflicts of power or acts exceeding the scope of the original federal statute failed in most cases to materialize. This was true for the following reasons: corporation personnel has been largely chosen and controlled through Washington; thus policies have been centrally directed. Mr. French in his study for the President's Committee pointed out that the financial policies have been usually supervised and controlled by the parent organizations to which the corporations have been tied administratively. A considerable portion of the borrowing has been done from the R.F.C. and the Treasury and therefore the policy is controlled through Washington. The R.F.C. reports to Congress monthly and thus a direct control can be kept on the borrowing policies of corporations even when chartered under state law. In addition early in 1934 non-stock governmental corporations and those whose capital stock was

¹⁰ *Ibid.*, 1559 (Feb. 6, 1935).

¹¹ *Ibid.*, 1552 (Feb. 6, 1935).

at least 50 per cent owned by the federal government and which were organized subsequent to January 1, 1932, were by executive order made subject to the Bureau of the Budget.¹² This provided that all estimates of expenditure must be approved by the Director of the Budget prior to the further obligation of emergency funds. Also an act of Congress prohibited as of June 30, 1937, a series of governmental corporations (including several which are organized under state charters) from incurring obligations for administrative expenses except pursuant to annual appropriations.¹³ In addition the Comptroller General has maintained other financial controls.¹⁴

In all these ways such state-incorporated federal agencies have been controlled nationally, although ostensibly they have an existence of their own through state corporate charter. Mr. O. P. Field, in his frequently cited article, "Government Corporations: A Proposal", commented on this problem as follows:

It is true that federal powers cannot be broader than federal powers constitutionally are, and that corporate powers cannot be broader than those granted by statute, but it is not an easy thing to tell where corporate powers end and federal powers end when the corporation derives its powers from the states (with reserved powers) and does work for the national government (of delegated powers).¹⁵

Mr. Field has probably isolated the real difficulty caused by incorporation under state law, namely, that it creates an un-

12 Ex. Order 6548 (Jan. 3, 1934); French, *op. cit.*, p. 115.

13 49 Stat. 1597; 15 U. S. C. A. 728 Note (June 22, 1936).

14 Letter dated Feb. 26, 1936, from Mr. J. R. McCarl, Comptroller General of the United States to the Administrator, Resettlement Administration. Letter dated Jan. 16, 1937 to Mr. Louis Brownlow, Chairman, President's Committee on Administrative Management, from Resettlement Administration, (Resettlement Administration files). See also: McDiarmid, John, *Government Corporations and Federal Funds*, The University of Chicago Press, Chicago, 1938, *passim*.

15 Field, O. P., "Government Corporations: A Proposal", 48 *Harvard Law Review* 775, at p. 789 (1935).

certain sphere of power. Has a particular governmental corporation organized under state law the power to do a particular act? Is its act *ultra vires* if beyond the scope of the federal statute but not beyond the scope of the charter? Although this ambiguity has not made much difference in actual practice because of federal controls, it would obviously be desirable to avoid it, if only out of a sense of tidiness. The attack led by Senator Schall on the floor of Congress and by Father Coughlin over the radio need not be unduly stressed. An examination of their criticism will reveal what really alarmed them. It was not the method of incorporation, or the possible influence of state law on a federal instrumentality, or even the possibility of state-federal conflict, but rather the very nature of the activity undertaken. The "invasion" by the federal government of fields which "properly" belong to private industry seemed to agitate some members of Congress. The concentration of the attack on the method used—incorporation of a federal agency under the laws of a state—seems to have been no more than clumsy strategy. A few illustrations taken from the Congressional Record make this point clearer.

Senator Schall: "About a year and 4 months ago President Roosevelt and 4 Cabinet generals and 9 bureaucracy colonels crossed over into Delaware, established their camp in Wilmington, and organized six holding corporations with which to make an assault on the Republic of the United States and make of it a United States of Soviet Russia. . ." ¹⁶

Senator Schall: "With infinite cunning, beyond the conception of our smiling President, but not beyond the capacity of an international group of schemers hiding behind him, the acts of the Seventy-third Congress have been perverted to conceal unwarranted corporate creations."

"Documentary evidence proves that Federal corporations, chartered at various points in the United States, have been created in readiness to take the place of all business activities of the country."

"The purpose of these corporations is wholly unholy in an intent wherever the Federal Government is to seize power without warrant in laws constitutionally enacted.

"If Congress can nullify the Constitution and its checks and balances then Congress itself can be nullified by this indirect method of a certificate of incorporation in any one of the 48 States. Thus the way has been prepared for the United States, Inc., and the immediate disappearance of all private rights."¹⁷

Senator Austin: [During a debate on an amendment to the T.V.A.] "Apparently those in charge believed that because the original act did not enable them to engage in the business of selling refrigerators, curling machines, household aids of various kinds operated by electrical energy, nevertheless they had the power to go up into Delaware and form another corporation which would have that authority. So we find them spreading out, the shadow of their great hand falling over a large part of the United States of America, with a threat that they not only intend to have this a yardstick, but a model and a form for all communities in this great land of ours."¹⁸

Evidently it was not the fundamental principles of incorporation under state law which were the target of attack. Congressional sentiment remained unalarmed even in the face of these distortions. After one of his orations, Senator Schall offered a resolution which had as its apparent purpose the liquidation of all governmental corporations established since March 4, 1933, except those directly created by Congress.¹⁹ This resolution was defeated by a vote of sixty-nine to ten.

Besides these blatant attacks there still remains a whole series of criticisms more worthy of serious consideration. For example, Mr. Herbert Emmerich, then Executive Officer of the Farm Credit Administration, in a report on government corporations, cites a series of state-federal conflicts which he considers to have arisen largely from incorporation under state law.²⁰ He concludes this portion of the discussion by saying:

¹⁷ 79 Cong. Rec. 1546, 1547, 1550 (Feb. 6, 1935).

¹⁸ 79 Cong. Rec. 7137 (May 8, 1935).

¹⁹ 79 Cong. Rec. 4048, 4052 (March 20, 1935).

²⁰ *Government Corporations and Independent Supervisory Agencies, Prob-*

In all probability many if not all of these questions would never have arisen if the corporations had been chartered under an enabling statute passed by the Congress of the United States.²¹

Among other questions he refers to the issue of state taxation of such corporations, which he says is "the most fruitful source of litigation." Mr. Emmerich illustrates his point by citing several cases, the first of which is the World War case of Clallam County, Washington *v.* United States and United States Spruce Production Corporation.²² This corporation had been organized by the government of the United States. The litigation arose when the state attempted to tax the property of the corporation. Mr. Emmerich in analysing this case indicated that the state of Washington based its right to tax the property on its own issuance of the charter. An examination of the reports of this case in both the trial and appellate courts reveals rather that the case turned on the right to tax the "means" employed by the government. The court denied the right to tax, by ruling that ownership and control were actually in the government of the United States and that the corporation served only as an instrumentality to effectuate the specific purpose of the national state. Mr. Emmerich infers that no attempt at taxation would have been made if the United States Spruce Production Corporation had been created directly by act of Congress rather than incorporated by federal officers in the state of Washington. Yet corporations organized directly by act of Congress or by federal officers under the authority of specific Congressional legislation have been repeatedly subject to attempted taxation. The magic of direct Congressional incorporation did not save the T.V.A. from controversy with the state of Tennessee over payment of the state corporation excise tax.²³ Nor did it save

lems of Administrative Management, the President's Committee on Administrative Management, Number IV, United States Government Printing Office, Washington, 1937, pp. 49-53.

²¹ *Ibid.*, p. 52.

²² 283 Fed. 645 (1922), 263 U. S. 341 (1923).

²³ French, *op. cit.*, p. 46.

it from being involved in an action which hinged upon the interpretation of the Alabama excise tax.²⁴ Various corporate units of the Farm Credit Administration were involved in litigation with the state of California even though they had been organized by federal officers holding authority to issue charters of incorporation by Congressional act. The state had attempted to impose a sales tax on commodities needed by these agencies.²⁵ One of these same units resisted an attempt by the state of Alabama to impose a mortgage recordation tax on a first mortgage held by this corporation, the controversy finally reaching the Supreme Court of the United States.²⁶ Another one of these units was forced to defend its right to bring suit in a Washington state court, this right having been denied because it had not qualified as a foreign corporation through payment of necessary fees.²⁷ The Home Owners' Loan Corporation had a similar experience. It was obliged to defend its right to prove a mortgage because it had refused to pay the customary state mortgage registration taxes.²⁸ This same corporation also engaged in a long controversy with state attorneys general over the attempted imposition of state stamp taxes.²⁹

Mr. Emmerich emphasizes the controversies which arise over tax questions when governmental corporations are organized under state laws. All the above illustrations indicate, however, that the problem of state taxation of federal governmental corporations exists whether incorporation takes place under state or federal law. This general conclusion admits of two exceptions. The first is to be found when an agency initially seeks incorporation under a state charter and then pays the

²⁴ Graves, Governor of Alabama, *et al. v. Texas Company*, 298 U. S. 393 (1936).

²⁵ *M. G. West Co. v. Johnson, State Treasurer, et al.*, 66 P. (2) 1211 (1937) (Cal.) Cert. denied, 302 U. S. 638 (1937).

²⁶ *Federal Land Bank of New Orleans v. Crosland*, 261 U. S. 374 (1923).

²⁷ *Federal Land Bank of Spokane v. Statelen et al.*, 70 P. (2) 1053 (1937) (Wash.).

²⁸ *H. O. L. C. v. Anderson*, 64 P. (2) 14 (1937) (Kan.).

²⁹ *Infra*, p. 51.

basic state incorporation tax upon advice of government counsel.³⁰ The other arises when Congress by specific reference makes provisions for particular tax exemptions. No problem arises in connection with these exemptions, because thus far the courts have consistently upheld tax exemption provided for by Congress. This does not mean, however, that any such law providing for exemption from state taxes can anticipate all situations and provide for all possibilities.

In this same article Mr. Emmerich painted a gloomy picture of the state-federal conflict over state regulations which occurs because federal governmental corporations are organized under state laws. He says:

Many controversies have also arisen between Federal and State Governments as to their respective authority over the conduct of the business of corporations having State charters. In some instances the States have sought to impose conditions and restrictions upon the business and activities of these corporations that would have made impossible the fulfillment of the purposes for which they were created.³¹

Specifically he had in mind the experience of the R.F.C. Mortgage Company, a Maryland corporation, when it sought to do business in other states. But no mention is made by him of the attempts of the T.V.A., a corporation created directly by act of Congress, to prevent its subjection to a state public service commission,³² to a state workmen's compensation law,³³ and to state garnishment proceedings.³⁴ Similarly no mention is made of the constant litigation in which the Home Owners' Loan Corporation has been involved in its not too successful

30 French, *op. cit.*, p. 46.

31 Emmerich, *op. cit.*, p. 52.

32 Comment: "State Taxation and Regulation of the Tennessee Valley Authority," 44 *Yale Law Journal* 326 (1934) at p. 329.

33 Posey v. Tennessee Valley Authority, 93 F. (2) 726 (1937).

34 Letter dated April 22, 1937, from Mr. J. L. Fly, General Counsel, T. V. A.

effort to protect itself from state garnishment laws.³⁵ As has been previously shown in connection with the tax question, this type of conflict does not result solely because corporations are chartered under state law.

Another criticism of incorporation under state law is that it results in jurisdictional conflicts. In the language of Mr. Van Dorn,

A more complicated question immediately arises as to jurisdiction. Tho the corporation is a creature of the state it is at the same time an agency of the federal government. This overlapping of jurisdiction has been the cause of some friction in the past and may prove a fruitful source of conflict in the future.³⁶

The author of this study did not clarify his conclusion with illustrations. But Mr. Emmerich, who shared the same opinion, has offered numerous illustrations to prove that when the national government sought to set up corporations under state law it had to defend their power to sue in federal courts.³⁷ This is quite true; but it must also be recognized that similar conflicts of jurisdiction have arisen which involved governmental corporations not organized under state law. A pertinent illustration is the case of Knox National Farm Loan Association et al. v. Phillips, decided by the Supreme Court of the United States early in 1937.³⁸ This case involved a conflict of jurisdiction and challenged the right of a state court to wind up the business of a national farm loan association either through the appointment of a receiver or by any other method.³⁹ This association was a federal governmental corporation organized by a federal officer under specific direction of Congress. The Court

³⁵ H. O. L. C. v. Hardie and Caudle, 100 S. W. (2) 238 (1936) (Tenn.); Gill v. Reese *et al.*, 4 N. E. (2) 273 (1936) (Ohio); Central Market, Inc. v. King (H. O. L. C., Garnishee) 272 N. W. 244 (1937) (Neb.), 302 U. S. 687 (1937).

³⁶ Van Dorn, *op. cit.*, p. 282.

³⁷ Emmerich, *op. cit.*, p. 52, footnote 3.

³⁸ 300 U. S. 194 (1937).

³⁹ 39 Stat. 365; 12 U. S. C. A. 711 (July 17, 1916).

of Appeals of Ohio held that it was possible to wind up the corporation under state law.⁴⁰ Hearing the case on a writ of certiorari, the United States Supreme Court reversed the decision. Mr. Justice Cardozo, speaking for the court, said:

To this we add, however, that a national farm loan association is an instrumentality of the federal government; that the time and manner of liquidation are governed by the federal statute; and that jurisdiction does not reside in the tribunals of a state to wind up the business of this governmental agency either by a receivership or otherwise.⁴¹

It was therefore decided that only the federal courts had the authority to dissolve such a corporation. In the meanwhile, however, the disagreement had caused legal conflict and had necessitated court action in no way different from that involving a state incorporated federal instrumentality.

Congress has increased the complexity of the question of jurisdictional relationships between state and federal courts when federal governmental corporations are involved. It has legislated that no federal district court shall have jurisdiction over any action or suit by or against any corporation upon the ground that it was incorporated by or under an act of Congress except where the United States is the owner of more than one-half of the stock of the corporation.⁴² Congressional interest is focussed on the question of ownership, rather than on the question of jurisdiction. As a matter of fact for years prior to this, both state and federal courts accepted jurisdiction in cases involving federal governmental corporations. The state courts took jurisdiction on the ground that their jurisdiction was concurrent with that of the federal courts. Federal statutes had made the corporations liable to be sued and yet had not denied jurisdiction to the state courts. The federal courts considered that they had jurisdiction on the ground that ultimately these

⁴⁰ 54 Oh. App. 334 (1936).

⁴¹ 300 U. S. 194 (1937) at p. 202.

⁴² 43 Stat. 941; 28 U. S. C. A. 42 (February 13, 1925).

corporations always depended on some federal law, and that therefore a federal question was always involved.⁴³

Thus far three possible points of friction between state and federal authority over state incorporated federal corporations have been examined, namely, conflicts over taxation, regulation, and jurisdiction. In all these instances it has been explained that conflicts have arisen whether or not incorporation took place under state law. The conflicts and problems have been similar in character despite the situs of incorporation.

Another type of criticism of considerable validity still remains to be discussed. It is argued that when Congress incorporates directly it has the advantage of being specific in its grant of power, and in regard to the type of agency it wishes to create; for example, the law setting up the Federal Deposit Insurance Corporation provided:

There is hereby created a Federal Deposit Insurance Corporation . . . to insure . . . the deposits of all banks which are entitled to the benefits of insurance under this section.⁴⁴

It is also argued that when Congress provides for the issuance of corporate charters by specified officers of the federal government it has been and can be equally precise. The statute which provided for the setting up of federal land banks provided specifically that there should be a Federal Farm Loan Board which should divide the United States "as soon as practicable" into a specified number of districts and should establish in each federal land bank district a federal land bank.⁴⁵ The law required that the Federal Farm Loan Board do this by the appointment of temporary directors and by filing with the Board preliminary certificates. On the other hand, authorization for agencies which have been incorporated under state law or under the District of Columbia rarely can be traced to specific references in statutes and therefore their powers are never pre-

⁴³ Field, *op. cit.*, p. 794.

⁴⁴ 48 Stat. 168; 12 U. S. C. A. 264 (June 16, 1933).

⁴⁵ 39 Stat. 362; 12 U. S. C. A. 671 (July 17, 1916).

cisely stated.⁴⁶ Two exceptions to this generalization, noted by Mr. French were Congressional provisions for state incorporated bodies as stabilization corporations⁴⁷ and for the organization of the Spruce Production Corporation.⁴⁸ The usual procedure, however, is for the state charter or the executive order to refer to one or more statutes under which the proposed incorporators consider that they are acting although these statutes may not specifically mention the corporation at all. For example, the executive order which provided for the creation of the Commodity Credit Corporation, under a Delaware charter, listed the following federal statutes as giving it authority to exist:⁴⁹

The Agricultural Adjustment Act
The National Industrial Recovery Act
The Federal Emergency Relief Act of 1933
The Reconstruction Finance Corporation Act
The Federal Farm Loan Act
The Farm Credit Act of 1933
The Emergency Relief and Construction Act of 1932

The Public Works Emergency Housing Corporation, the Electric Home and Farm Authority, and the Public Works Emergency Leasing Corporation all referred to Title II of the National Industrial Recovery Act as being the source of their authority.⁵⁰ Yet this act in no place provides specifically for the setting up of these or any corporations. Title II of the National Industrial Recovery Act was referred to, however, as giving authority by indirection. The section provided:

The President is hereby authorized . . . to establish such agencies . . . to appoint . . . such officers and employees, . . . as he may find necessary, to prescribe their authorities, duties, responsi-

⁴⁶ French, *op. cit.*, p. 32; Emmerich, *op. cit.*, p. 50.

⁴⁷ 46 Stat. 14; 12 U. S. C. A. 1141 g (June 15, 1929).

⁴⁸ 40 Stat. 888; 50 U. S. C. A. 172 (July 9, 1918).

⁴⁹ Ex. Order No. 6340 (October 16, 1933).

⁵⁰ 79 Cong. Rec. 1553, 1560 (Feb. 6, 1935). The Public Works Emergency Leasing Corporation surrendered its corporate franchise on Jan. 21, 1935.

bilities and tenure. . . The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.⁵¹

The citation of this section as giving authority for the formation of governmental corporations under state law particularly alarmed certain members of Congress. As Representative McLean of New Jersey put it,

I venture to say that there is not a Member of this House who will say to me after having read those sections that by any rule of statutory construction he has the slightest idea that they confer upon the President of the United States the right to incorporate, under State law, corporations to carry on Federal activities.⁵²

The attack in this form can be readily answered. The section of the National Industrial Recovery Act quoted above, gave the President authority to create "agencies." Certainly corporations are agencies and have been recognized as agencies of the United States by the courts, by Congress and by the President.⁵³ The question of the use of a state-created body for this purpose has not been directly raised in litigation, nor does there seem to be any legal objection to it.

As a further argument against state chartering of federal corporations, Mr. M. E. Dimock, in his study entitled *Government-Operated Enterprises in the Panama Canal Zone*, makes the generalization that

When a federal corporation is chartered by the laws of the state, it is the state and not Congress which gives birth to the corporation . . . Furthermore, Congress thereafter has no power to change the powers or liabilities of a state-incorporated undertaking, as it does

51 48 Stat. 200; 40 U. S. C. A. 401 (June 16, 1933).

52 80 Cong. Rec. 4336 (March 25, 1936).

53 Ex. Order No. 2884 (June 21, 1918) designated the United States Grain Corporation, a Delaware corporation, an agency of the United States. 49 Stat. 1 provided that the R. F. C., the Commodity Credit Corporation and the Electric Home and Farm Authority should continue until specified dates in 1937 to be agencies of the United States.

have when incorporation is by special or under the general incorporation law of the District of Columbia.⁵⁴

It is regrettable that Mr. Dimock did not further develop and explain his statement that Congress cannot add to or subtract from the powers of a corporation once it has been incorporated under state law. Congress does not seem to accept this limitation. For by statute it extended the United States Criminal Code so that anyone making false claims against a corporation in which the United States of America is a stockholder is guilty of a crime carrying a penalty up to ten years imprisonment or a \$10,000 fine or both.⁵⁵ The United States Criminal Code thus made no distinctions based on situs of incorporation. By this statute, it seems to the writer that Congress did enlarge the powers of certain federal corporations chartered under state laws, although it might be construed as a mere facilitation of its powers. As the Supreme Court of the United States has phrased it, "The United States can protect its property by criminal laws," regardless of the place of incorporation.⁵⁶ In addition when Congress provided that after June 30, 1937, the R. F. C. Mortgage Company, a Maryland corporation, might only incur administrative expenses pursuant to annual appropriations, it undoubtedly was altering some of its powers. Perhaps it might be well to mention here that Congressionally created federal corporations have on occasion facilitated the exercise of their own powers through the use of helpful state legal remedies.⁵⁷ Thus, Congressionally created federal corporations have evened up the score.

The attitudes of the several states to the question of incorporation offer a complementary subject for consideration. One investigator presumes that the states should feel themselves affronted because their own laws are being used to set up federal corporations which are then controlled by the national gov-

⁵⁴ University of Chicago Press, Chicago, 1934, p. 193.

⁵⁵ 48 Stat. 996; 18 U. S. C. A. 80 (June 18, 1934).

⁵⁶ *United States v. Walter*, 263 U. S. 15, 17 (1923).

⁵⁷ *R. F. C. v. Central Republic Trust Co. et al.*, 17 F. Supp. 263 (1936).

ernment. An examination of all pertinent state legislation of the last few years reveals no resentment or any other unfavorable reaction to incorporation through the medium of a state charter. There is nothing which would indicate that state legislatures differentiate on the basis of place of origin. State legislatures which have given exemptions or additional powers to federal corporations have occasionally classified on the basis of percentage of ownership held by the United States, an exemption being given if the United States owns fifty-one per cent of the stock. Aside from that no bias has been shown.

Such are the conflicts and complexities supposed to result from incorporation under state law. Sufficient illustrations have been given to indicate that similar complexities may likewise occur even when incorporation has been more directly federal. Conflicts between state and federal authorities over the control of governmental corporations may be minimized only to the extent to which Congress can be precise as to its desires. It should use specific terms when it creates a corporation solely by legislative fiat, or when it authorizes federal officers to issue charters directly, or when it permits incorporation to take place under the laws of the various states or of the District of Columbia.

It has also been pointed out that a certain portion of the attack, although ostensibly made upon incorporation under state charter, was really aimed at the exercise of national powers in unaccustomed fields. The strongest argument given against incorporation under state law was that a corporation might increase its powers by virtue of the state charter. This danger has been overestimated by critics. In actual practice, federal controls tend to prevent any such situation from arising. On the other hand, the fear that incorporation under state charter would inhibit the power of federal governmental corporations has proved to be unfounded. In practice the corporations, no matter under what law organized, have generally resisted state taxation or regulation. When a conflict over regulation or taxation has reached the courts, the decision has been based on other considerations than the authority which issued the charter.

PART II

THE STATE SEEKS TO LIMIT THE
GOVERNMENT CORPORATION

CHAPTER II

THE STATE SEEKS TO TAX THE GOVERNMENT CORPORATION

THE real problem of taxation in a federal system is primarily that of a fair division among units of government. At different times the Congress, state legislatures, federal and state attorneys general, comptrollers general, national agencies, corporate or other, and state and federal courts have all expressed opinions concerning the propriety of any particular division.

When national government corporations attempt to operate within the states they are immediately confronted by the multi-form state tax systems. Because of the great costs of governmental activity few states can operate without an ingenious variety of general property taxes; corporate income, dividend, qualifying, franchise and property taxes; individual income taxes; stamp taxes; recordation taxes; fees for the commencement of legal suits; motor vehicle taxes and the sales tax. The government corporation has to decide in each case what state taxes it should pay, if any. A number of questions immediately present themselves: Did the creation of the particular government corporation lessen or increase the tax burden for any particular state? Did Congress in the statute which had either expressly or by implication authorized the formation of a particular government corporation express its wishes in the matter of tax immunity? Having incorporated, should the government corporation recognize the legal implications of that form as understood in private law? (In private law, the corporation constitutes a legal entity, and is so treated regardless of its owners. On that assumption the government corporation ought not to clothe itself in the immunity of the federal government but be subjected to applicable state taxes.) Should greater importance be attached to the type of activity undertaken than to the form under which it is carried out? In this event if the government corporation engages in an accustomed gov-

ernmental activity it may rightfully seek the tax immunity of the national government; but when acting in a manner resembling private business, then it would be only fair that such corporations submit to their proper share of state taxation. If the government corporation decides to pay certain state taxes, to what extent will it be prevented from so doing by adverse rulings of the Comptroller General of the United States, the United States Attorney General and the decisions of the United States Supreme Court?

With few exceptions, government corporations ignore the implications of the corporate form and resist state taxation in terms of the immunity accorded to the national government itself. Counsel for the corporations write to state attorneys general and seek to obtain immunity for their corporation from all state taxation. In this connection state attorneys general play a very important role, for the question is settled without any further trouble if they rule in favor of immunity. Wherever possible, counsel for the government corporations rely for the recognition of their immunity upon a specific provision of a Congressional statute.¹ Where such statute or language is not available, they revert to basic constitutional theory of the implied immunity of sovereigns, to the Marshallian doctrine of the supremacy of the central government, and to Supreme Court decisions.² Depending on the tax involved, the government corporations repeatedly cite with favor one or more of the following Supreme Court decisions: *McCulloch v. Maryland*,³ *Federal Land Bank of New Orleans v. Crosland*,⁴ *Clallam County v. United States*,⁵ *Panhandle Oil Co. v. Miss-*

¹ Home Owners' Loan Act of 1933 as amended, 49 Stat. 296, 297; 12 U. S. C. A. 1461-1468 (May 28, 1935).

² *McCulloch v. Maryland*, 4 Wheaton 316 (1819); *The Collector v. Day*, 11 Wall. 113 (1870). See also: Comment: 44 *Yale Law Journal* 326-340, at p. 334 (1934); Thurston, John, "Government Proprietary Corporations," 21 *University of Virginia Law Review* 351-396, 465-503 at p. 483 (1935).

³ 4 Wheaton 316 (1819).

⁴ 261 U. S. 374 (1923).

⁵ 263 U. S. 341 (1923).

issippi,⁶ *New York ex rel. Rogers v. Graves*,⁷ and *Graves, Governor of Alabama, et al. v. Texas Company*⁸ on the other hand state attorneys general and state courts who wish to justify taxation of federal governmental corporations point to *South Carolina v. the United States*,⁹ *Ohio v. Helvering*,¹⁰ and *Helvering, Commissioner of Internal Revenue v. Powers, Executor*,¹¹ and argue that the doctrine of these cases ought to apply reciprocally.

The case of *South Carolina v. United States* was a landmark in the history of the struggle for tax immunity. In this instance the Supreme Court departed from a line of precedent and ruled that only the purely governmental functions of a state were entitled to immunity from national taxation. The case involved a dispute over the attempted enforcement of a federal excise tax on a state liquor monopoly. The court found that South Carolina had made a profit of almost \$500,000 for the year 1901 out of its monopoly. It further stated that the state ostensibly acting to regulate might then “. . . take possession, in like manner, of tobacco, oleomargarine, and all other objects of internal revenue.”¹² The Supreme Court at that time pointed out that the national government was denied the right to tax an agency of the state only in those instances when the tax was to be levied on “the means . . . employed by a State, in the discharge of its ordinary functions as a government.” The Court made a sharp distinction therefore between the governmental and proprietary functions of the state.

States presumably alarmed about the effects of increased national activities have since made sporadic attempts to tax

6 277 U. S. 218 (1928).

7 299 U. S. 401 (1937).

8 298 U. S. 393 (1936). See also: *State of Alabama v. United States*, 38 F. (2) 897 (1930), 282 U. S. 502 (1931).

9 199 U. S. 437 (1905).

10 292 U. S. 360 (1934).

11 293 U. S. 214 (1934).

12 199 U. S. 437, 454 (1905).

government corporations and for this purpose have seized upon the distinction between governmental and proprietary set down in *South Carolina v. the United States*. State attorneys general and state courts have an occasion also availed themselves of one of the considerations which was recognized in the decision in *South Carolina v. United States*: namely, that if states were to deprive the federal government of revenue the result might be calamitous. They have held that an analogous argument might apply equally to state revenue in the face of ever-varied federal activities. In answer counsel for the various government corporations have contended that the powers of the national government are limited and that it therefore cannot act in a non-governmental way, thereby shedding its tax immunity.

The decisions in the state courts point in many directions. While some dicta in the United States Supreme Court decisions¹³ indicate that the power to tax and the immunity from

13 *United States v. California*, 297 U. S. 175, 184 (1936) Mr. Justice Stone said: "The analogy of the constitutional immunity of state instrumentalities from federal taxation, on which respondent relies, is not illuminating. That immunity is implied from the nature of our federal system and the relationship within it of state and national governments, and is equally a restriction on taxation by either of the instrumentalities of the other. Its nature requires that it be so construed as to allow to each government reasonable scope for its taxing power . . . which would be unduly curtailed if either by extending its activities could withdraw from the taxing power of the other subjects of taxation traditionally within it."

See also: *National Bank v. Commonwealth*, 9 Wall. 353, 362 (1869); *Thomson v. Pacific R. R.*, 9 Wall. 579, 591 (1869); *Railroad Co. v. Peniston*, 18 Wall. 5, 30 (1873). See also: Dowling, Noel T., Cheatham, E. E., and Hale, Robert L., "Justice Stone and the Constitution," 36 *Columbia Law Review* 351-381 (1936); Stoke, H. W., "State Taxation and the New Federal Instrumentalities," 22 *Iowa Law Review* 39-59 (1936).

In *Metcalf and Eddy v. Mitchell*, 269 U. S. 514, 523 (1926), Mr. Justice Stone said: "But neither government may destroy the other nor curtail in any substantial manner the exercise of its powers. Hence the limitation upon the taxing power of each, so far as it affects the other, must receive a practical construction which permits both to function with the minimum of interference each with the other; and that limitation cannot be so varied or extended as seriously to impair either the taxing power of the government imposing the tax . . . or the appropriate exercise of the functions of the government affected by it. . . ."

taxation should be reciprocal, this court has never met the issue squarely in a case involving a tax on an activity of the federal government.¹⁴

If the doctrine of *South Carolina v. the United States* was considered applicable to the "proprietary" activities of the federal government it would seem that Congress, even if so disposed, might not be permitted to exempt certain types of national activities from state taxation. This might conceivably give rise to a situation in which Congress would declare certain corporations, authorities or administrations, exempt from state taxation—only to have such laws declared unconstitutional by the Supreme Court. Yet the Supreme Court has never upheld any state tax on any federal instrumentality to which Congress has specifically granted exemption.¹⁵ This clear record of past precedents gives some indication of probable future decisions.

The difficulties may be forcefully illustrated by mentioning some specific tax problems encountered by one of the government corporations, the R. F. C. Mortgage Company, when it incorporated in Maryland and afterwards attempted to operate in other states of the Union.¹⁶

One of the first questions posed was this: In order to have the company come into existence was it obliged to pay the Maryland Bonus Tax based on original capitalization, which the state levied on private domestic corporations? Moreover, was it required to pay only the fees covering the actual cost of

14 As to settling the issue for the states, just as *South Carolina v. United States* was a departure from earlier precedents, so *Brush v. Commissioner of Internal Revenue* seems to limit the application of *South Carolina v. United States*. See *infra*, p. 82.

15 22 *Iowa Law Review* 39-59 at p. 59; see also: McGuire, O. R., "Some Problems Arising from Government Corporations," 85 *University of Pennsylvania Law Review* 778-794 at p. 791 (1937); Reed, Stanley, and others, "Government-Controlled Business Corporations," 10 *Tulane Law Review*, 79-101 at p. 86 (1935).

16 See Appendix III, *infra*, for description of the R. F. C. Mortgage Company.

filing the incorporation papers? Once organized, was it a foreign corporation insofar as Michigan was concerned and therefore required to pay the Michigan Privilege Tax for qualifying as such? If it owned automobiles, did the corporation have to pay the state license fee in order to use the roads or was it protected by governmental immunity? When such automobiles needed gas was the corporation exempt from the state gasoline sales tax? Assuming that the R.F.C. Mortgage Company took a mortgage on real estate as security for a loan, did state recordation taxes have to be paid before the mortgage could be filed? If the tax was not paid, might such mortgages be proved as prior liens in state courts? In case the corporation felt compelled to foreclose a mortgage was it required to pay the state fee for the commencement of a suit? If the corporation became the title owner of property on foreclosure could local taxes for new sewers or new roadways be assessed against it? If the corporation failed to file an annually required state report was it obliged to pay the tax penalty? When the X bank invested in bonds of such corporations was it compelled to include the interest from these bonds in computing corporate taxes? Must employees of the R.F.C. Mortgage Company pay state income taxes or were they to be immune? The following pages will present an analysis of the situations which have precipitated these specific problems during recent years in the various states.

State attorneys general are frequently mentioned in the analysis. They are important because they act as a court of first resort in the question of tax immunity. Both counsel for the government corporations and state officials are to be found asking them to state their opinion as to the liability of a certain government corporation to pay a particular state tax. On the basis of the position taken by the state legal officers both state officials and counsel for the government corporation decide upon their next step.

Attorneys general have been fairly unanimous in recognizing that the Home Owners' Loan Corporation, the Bank for

Cooperatives (a unit of the Farm Credit Administration), the R.F.C., the Federal Deposit Insurance Corporation, the Regional Agricultural Credit Corporation, and Rural Rehabilitation Corporations are exempt from paying stamp taxes on conveyances or recordation taxes on mortgages held by them. Some states in addition have settled the question by an act of the legislature.¹⁷ Wherever the problem has arisen, however,

17 Op. At. Gen., Wash. (May 5, 1936); Op. At. Gen., Ala., p. 424 (Nov. 15, 1935), p. 544 (April 2, 1934); Op. At. Gen., Minn., p. 1165 (April 2, 1934) all consider the Home Owners' Loan Corporation exempt from state stamp or recordation taxes.

Op. At. Gen., Ala., p. 139 (Jan. 28, 1933), p. 460 (Jan. 6, 1934); Op. At. Gen., N. Y., p. 189 (Dec. 27, 1934); Op. At. Gen., Pa., p. 161 (April 7, 1934) all considered the R. F. C. exempt from state stamp or recordation taxes.

Op. At. Gen., Pa., p. 161 (April 7, 1934) considered the Regional Agricultural Credit Corporations exempt from recordation taxes.

Op. At. Gen., Ala., p. 593 (June 29, 1934) considered that the Production Credit Association was exempt from mortgage privilege taxes.

Op. At. Gen., Mich., p. 373 (Jan. 29, 1936) considered the Federal Deposit Insurance Corporation exempt from the Michigan Mortgage Recordation Tax.

Op. At. Gen., Minn., p. 1168 (Nov. 15, 1934) considered the Bank for Cooperatives exempt from the Minnesota Recordation Tax.

Op. At. Gen., Ala., p. 139 (Jan. 28, 1933) considered federal land banks (Farm Credit Administration Unit) exempt from recordation taxes.

Op. At. Gen., Pa., p. 161 (April 7, 1934) considered federal land banks (Farm Credit Administration Unit) exempt from recordation taxes.

Per Contra: Op. At. Gen., Fla., p. 42 (Aug. 18, 1934) considered documentary stamp tax applicable to stock issued by a state bank and purchased by the R. F. C..

Op. At. Gen., Fla., p. 38 (Sept. 22, 1934) considered documentary stamp tax applicable to promissory notes made to Commodity Credit Corporation as payee.

Statutes of the following states are illustrations of exemption specifically provided for by state legislatures: N. C. Laws 1935, ch. 120 provided for exemption of Production Credit Associations, and North Carolina Rural Rehabilitation Corporation from fees for registering federal crop liens and mortgages.

N. C. Laws 1935, ch. 388, provided exemption (law only applicable to Wilson County) from fees for registering federal crop liens and chattel mortgages under Farm Credit Act of 1933.

Mich. Laws 1935, no. 14, provided that no tax shall be imposed upon any building and loan mortgage or upon any mortgage made and running to the

Federal Savings and Loan Associations have not been held to be exempt. In this particular instance, the theory has been that the Congressional act under which these bodies were organized permitted such taxation.¹⁸

Except for the associations just cited, all the above mentioned corporations have been considered exempt from the taxation largely because of the successful exploitation by counsel for the corporations of the case of *Federal Land Bank of New Orleans v. Crosland*. The case involved an Alabama mortgage recordation tax as it applied to a first mortgage held by a federal land bank. Counsel for the bank contended that the Federal Farm Loan Act of July 17, 1916 provided that first mortgages executed to federal land banks should be deemed instrumentalities of the government of the United States. Therefore both they and the income derived from them were to be free from federal, state, municipal and local taxation in accordance with Congressional act. The state Supreme Court, however, sustained the recordation tax. The court held that the payment was a voluntary one since the bank was not compelled to record its mortgage, but inasmuch as it had chosen to do so it was subject to the regular tax for the registration of its security. When appeal was taken to the United States Supreme Court, the Court did not agree that compliance with the state law was optional. The Court considered that the law

R. F. C. or to any United States government corporation or agency or trustee for the benefit of such corporation or agency.

N. Y. Laws 1934, ch. 455, provided that mortgages on real property assigned or made to the Home Owners' Loan Corporation shall be exempt from state recordation taxes.

S. C. Laws 1934, no. 878, limited the fee to 75 cents for recording any mortgage conveying an interest in or a lien on a Regional Agricultural Credit Corporation, a Federal Intermediate Credit Bank or any other corporation which rediscounts notes or other obligations with, or procures loans from, a Federal Intermediate Credit Bank, the R. F. C., of the government of the United States or any department, agency, instrumentality or officer thereof. (The 75 cents charge can be regarded as a service charge and not a tax.)

18 Op. At. Gen., Ala., vol. 1932-1934, p. 639 (Aug. 28, 1934); Op. At. Gen., Minn., p. 1167 (April 20, 1934).

made compliance compulsory since failure to record meant that such a lien might be overridden in favor of any purchaser without notice. It further recognized that "the State is not bound to furnish its registry for nothing. It may charge a reasonable fee to meet the expenses of the institution. But in this case the Legislature has honestly distinguished between the fee and the additional requirement that it frankly recognizes as a tax."¹⁹ The opinion then concluded that if a state attempted to disguise the tax by combining the tax and the service fee, judicial bodies would be called upon to consider how far the charge exceeded the requirement necessary for carrying the administrative costs of the service. Thus this case has drawn a distinction between service charges and excise taxes, holding that a federal instrumentality is not immune to service charges; but that taxes beyond a mere service charge are a burden on the corporation and an impediment to its lawful operation as an agency of the United States.

Using the *Crosland* case as its authority, therefore, the Washington office of the Home Owners' Loan Corporation wrote memoranda which were sent to the state and regional counsel for the corporations.²⁰ The instructions accompanying them suggested that the data be made available to state attorneys general. The memoranda urged that the tax exemption provision in the Home Owners' Loan Act closely resembled the one in the act under which the *Crosland* case arose. By analogy, therefore, it was argued that state stamp taxes and recordation taxes could not be levied on the Home Owners' Loan Corporation. The local offices of the Home Owners' Loan Corporation were willing to pay ordinary service charges; moreover they were supported by the prestige of an analogous Supreme Court citation and in addition could appeal to the

¹⁹ *Federal Land Bank of New Orleans v. Crosland*, 261 U. S. 374, 378 (1923).

²⁰ Files of Home Owners' Loan Corporation, contain copies of letters sent to State Counsel of H. O. L. C. in Topeka, Kansas (Sept. 12, 1935), to Regional Counsel, Memphis, Tenn. (Jan. 3, 1936).

basic constitutional theory of implied immunity. They therefore won their point without resort to litigation.²¹ One of the few aspects of this controversy which reached the courts is to be found in the case of *Home Owners' Loan Corporation v. Anderson*.²² This was an action in foreclosure brought by the Home Owners' Loan Corporation against a defendant who had borrowed money from the corporation and had given a mortgage on real property in return. The defendant's demurrer to the foreclosure was based on the failure of the plaintiff to comply with the Kansas mortgage registration fee requirement. The statute in point provided in addition that failure to pay the fee would result in the refusal by a state court to permit any such mortgage to be proved or put in evidence. The defendant argued that the Home Owners' Loan Corporation could not prove its mortgage and thus could not foreclose. The plaintiff's petition set out that it was an instrumentality of the United States and therefore was exempt from taxation. The court held the Home Owners' Loan Corporation to be an instrumentality of the federal government exempt from taxation and permitted it to introduce the mortgage into evidence even though it had not complied with the law.

As the above analysis indicates, the disagreement over stamp and recordation taxes was settled with comparative ease. This experience was contrary to the prediction of a contributor to one of the legal periodicals, who was convinced that attempts to obtain exemption from recordation and stamp taxes would meet with greater opposition than similar attempts at exemption from state license or qualifying taxes.²³ The writer based his predictions on the fact that the nominal sums of money involved in stamp and recordation fees could hardly be con-

²¹ The Home Owners' Loan Corporation is used in the text for illustrative purposes only. Other government corporations were able to solve this problem without litigation.

²² 64 P. (2) 14 (1937) (Kan.).

²³ Robinson, Harold, "Some Problems Confronting the Public Works Emergency Housing Corporation," 19 *Cornell Law Review* 548-580 (1934).

sidered a burden on the government. On the other hand, he argued that a tax for the privilege of qualifying to do business in a state is a tax on the means of carrying on governmental functions and would seem clearly invalid as a burden on the government. To prove his contention he cited the experience of the United States Housing Corporation, a war-time corporation which was organized in New York State and qualified in twenty states without the necessity of paying any taxes. The following summary will show that the law concerning license and privilege taxes is in considerable confusion.

The Electric Home and Farm Authority Inc., then a Delaware corporation whose stock was subscribed to by the United States and whose funds are carried in the treasury of the United States, attempted to do business in Mississippi.²⁴ It was met by a request by the Secretary of State to qualify as a foreign corporation by complying with special tax requirements.²⁵ The Authority refused to comply. The Secretary of State then requested the Attorney General of Mississippi to issue a ruling. The latter official thereupon stated that he considered the corporation subject to the laws governing foreign corporations which wish to do business in the state and that it should be compelled to pay the required taxes.²⁶ The attorney general admitted that instrumentalities of the federal government cannot be taxed by a state but he asserted that, in order to claim the immunity, they must be exercising a governmental function. In this case the attorney general maintained that the Electric Home and Farm Authority was engaging in a business and not a governmental enterprise. The argument closed by citing *Ohio v. Helvering*, Commissioner of Internal Revenue et al., to support the view that if a state

²⁴ This corporation was organized in Delaware January 17, 1934 and later reorganized under the laws of the District of Columbia. Its purpose was to assist in financing householders in purchasing electrical equipment and to engage in educational work. See Appendix III *infra*.

²⁵ Any corporation not organized under the laws of the state of origin is called a foreign corporation.

²⁶ Pp. 64-65 (June 6, 1934).

engages in a business enterprise the federal government may impose a tax; the attorney general held that in consequence this decision should apply reciprocally.²⁷ The attorneys general of West Virginia and Indiana agreed with the Mississippi opinion and so ruled against the Authority.²⁸ The Attorney General of Colorado became almost whimsical when he ruled, "The Electric Home and Farm Authority is *practically* a governmental agency and as such is not required to qualify and pay a tax as a foreign corporation."²⁹

The R.F.C. Mortgage Company, a Maryland corporation, was considered exempt from qualifying taxes levied on foreign corporations by the attorneys general of Utah, Nebraska, and Michigan.³⁰ Tax regulations of Ohio have considered the Reconstruction Finance Corporation similarly exempt from a state license fee preparatory to doing business in that state. Alabama regulations exempt all corporations organized under the laws of the United States from paying initial fees.

After the adverse rulings mentioned above the treasurer of the Electric Home and Farm Authority applied to Comptroller General McCarl for permission to pay the Indiana qualifying tax. He ruled that the corporation was an instrumentality of the United States and consequently exempt from all state taxation except when the federal government gave specific consent.³¹ Mr. McCarl therefore deduced that payment of such tax vouchers ought not to be approved as legitimate expenses

²⁷ 292 U. S. 360 (1934).

²⁸ Op. At. Gen., W. Va., vol. 1935-1936, pp. 354-356 (Nov. 21, 1935). Op. At. Gen., Ind. as reported in 15 U. S. Comptroller General Decisions 813 (July 1, 1935-June 30, 1936).

²⁹ Sept. 24, 1935, p. 93. (Except as otherwise indicated all italics have been added by the author of this monograph.)

³⁰ Op. At. Gen., Neb., vol. 1935-1936, p. 90-91 (June 10, 1935); Op. At. Gen., Mich., vol. 1935-1936, p. 204 (June 4, 1935); Op. At. Gen., Utah (June 5, 1935) reported in McGuire, O. R., "Some Problems Arising from Government Corporations," 85 *University of Pennsylvania Law Review* 778-794 at p. 789 (1937).

³¹ 15 U. S. Comptroller General Decisions 813 (July 1, 1935-June 30, 1936).

of the Authority. He further advised that the matter be turned over to the proper legal authorities for appropriate action. It may be remarked in passing that the decision by Mr. McCarl is a curious one in the light of an earlier letter of his which appeared in the Congressional Record.³² Here he stated:

There appears for consideration also the matter of incorporating a Government agency without specific statutory authority in a jurisdiction outside the seat of the Federal Government and subject to State laws, possibly also subjecting a Government agency and Government property to state taxation.

The Electric Home and Farm Authority whose exempt status Mr. McCarl so stoutly defended was originally organized without specific statutory authority and under state law.

The then active Federal Subsistence Homesteads Corporation, a Delaware corporation, whose purpose it was to make loans for the purchase of subsistence homesteads, was advised by the Attorney General of the United States in a comprehensive and searching opinion that the corporation was under no necessity to qualify, register or pay taxes as a foreign corporation when operating in states outside the state of its incorporation.³³ The Attorney General advised that the corporation should resist the attempted imposition of any such taxes. Thus the ultimate disposition of this problem was left to the courts.

What reply have the courts given to the question whether a state may require a corporation owned or controlled by the government of the United States to pay a license or privilege tax as a prerequisite for doing business in a particular state?

The only case precisely in point is *Federal Land Bank of Spokane v. Statelen et al.* decided in the Supreme Court of the State of Washington on August 9, 1937.³⁴ Here the litigation

32 78 Cong. Rec. 1053 (Jan. 22, 1934).

33 38 Op. At. Gen. U. S. 3 (July 18, 1934).

34 70 P. (2) 1053 (1937) (Wash.). See: 70 P. (2) 1055 (1937) (Wash.) for a related case.

involved a Washington statute which prohibited foreign corporations from suing in the state courts unless they had paid the state license fees. The Federal Land Bank of Spokane brought an action to foreclose a mortgage although it had never paid the fee. The court ignored the contentions of the defendants that Congress does not have the power to organize corporations exempt from taxation for the purpose of engaging in the mortgage business within the several states. The opinion stated:

It is, therefore, plain that the existence of conflicts between the act of Congress providing for the creation of federal land banks and our own Constitution or statutes is wholly immaterial, *if* the act of Congress establishing Federal land banks and defining their powers and immunities was 'made in pursuance' of the Federal Constitution.³⁵

There are no federal decisions which answer the question whether a state may require a government corporation to pay a license tax as a prerequisite for doing business but numerous dicta in earlier federal cases may be construed as pointing the way. In *Pembina Consolidated Silver Mining and Milling Co. v. Pennsylvania*, the Court said:

The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the federal government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the federal government, is not to be restricted by state authority.³⁶

An analogous problem to the one just considered concerns the question whether a federal agency may be taxed as a do-

35 70 P. (2) 1053, 1054 (1937) (Wash.).

36 125 U. S. 181, 190 (1888). See also *Butler Bros. Shoe Co. v. United States Rubber Co.*, 156 Fed. 1, 16 (1907); *Twin Falls National Bank v. Reed*, 44 Idaho 573 (1927).

mestic corporation under the laws of the state in which it desires to incorporate. Such taxes are variously known as bonus, incorporation, or franchise taxes. United States attorneys general have taken the position that such agencies wishing to incorporate are required to pay preliminary fees or costs which are in the nature of charges for services rendered, but that they are not required to pay additional taxes.³⁷ The Attorney General of Maryland refused, however, to incorporate the R.F.C. Mortgage Company unless it paid a bonus tax of \$1,200 on the authorized stock of \$25,000,000. This was imposed in addition to a \$10.00 filing fee which the company recognized as justifiable. The applicant for incorporation claimed its immunity on the ground that the entire capital stock when issued would be held by the R.F.C. whose stock in turn was held by the United States Treasury. It also argued that the stock of the R.F.C. Mortgage Co. would consist solely of public moneys obtained from the United States Treasury; that the incorporators were employees of the United States Government; and that their purpose was to lend public money to aid in the reestablishing of a normal real estate market. This claim for immunity was refused on the ground that Maryland state statutes specifically prohibited the issuance of a certificate of incorporation to any domestic company until the payment of the bonus tax. In addition it was argued that this was not a property tax and that moreover treatises on taxation regarded it in strict legal interpretation as no sort of tax at all. The Attorney General concluded his opinion by saying,

However, in expressing my opinion that, under the existing laws and constitution of Maryland, the State is not bound to furnish the Federal Government with its corporate facilities free of charge, I am not passing upon the question as to the taxability of the property of the R.F.C. Mortgage Corporation, or the question of its liability to the payment of franchise taxes after incorporation.³⁸

37 18 Op. At. Gen. U. S. 491 (Oct. 21, 1887); 23 Op. At. Gen. U. S. 299 (Oct. 17, 1900); 38 Op. At. Gen. U. S. 3 (July 18, 1934).

38 Op. At. Gen., Md., p. 800 (April 8, 1935).

This particular aspect of the problem of state taxation is not likely to go as far as litigation. A simpler solution for the future will be to incorporate in a state with a more amicable tax policy.

After the R.F.C. Mortgage Co. had solved its disagreement with Maryland it was organized as a domestic corporation in that state. It was permitted to carry on its activities in Utah, Nebraska and Michigan without paying the state license fees usually required of foreign corporations.³⁹ But the question had still to be determined whether a state franchise tax could be collected on this or similar corporations for the privilege of continuing in business.

With the exception of federal savings and loan associations, state law departments consider national government corporations exempt from annual franchise taxes.⁴⁰ This exemption is easily understood, since the franchise tax is imposed for the privilege of carrying on an activity and therefore could be considered a direct burden on the work of the central government. It is true that attorneys general have occasionally

³⁹ *Supra*, p. 54, footnote 30.

⁴⁰ Op. At. Gen., N. C., (June 22, 1934), considered that a non-profit corporation which is also a subsidiary of the federal government was exempt from a franchise tax.

Op. At. Gen., Mich., (June 4, 1935), p. 204, considered the R. F. C. Mortgage Co. was exempt from the franchise tax.

Tax Regulations, Ohio: holding that the R. F. C. was exempt from a franchise tax.

Op. At. Gen., Tenn., (July 12, 1937), considered that the Rural Rehabilitation Corporation of Tennessee was exempt from a franchise tax.

Op. At. Gen., Tenn., (July 12, 1937), considered that the Tennessee Valley Associated Cooperative Inc. was exempt from a franchise tax.

Op. At. Gen., N. C., (Sept. 7, 1935), p. 213, considered that the R. F. C. Mortgage Co. was exempt from the franchise tax.

Per Contra: Op. At. Gen., Del., (Aug. 18, 1937), considered that the Federal Subsistence Homesteads Corporation was subject to the franchise tax.

Home Federal Savings and Loan Association *et al. v. Tobin*, Tenn. Sup. Ct. (Jan. 30, 1937) decided that a federal savings and loan association is subject to the franchise tax imposed by Tenn. Laws 1935, ch. 5. The decision was based on the theory that Congress gave its consent to such taxation. This same conclusion has been reached in another connection.

arrived at this conclusion somewhat reluctantly and only after some pressure had been exerted. This was true of the legal adviser of North Carolina. On April 23, 1935 he ruled that the R.F.C. Mortgage Co., a foreign corporation, had to pay the annual franchise tax. On September 7, 1935 he changed his mind.⁴¹ In the latter opinion it was indicated that between these two dates the general counsel of the R.F.C. Mortgage Company in Washington, through its agency counsel in the locality, had filed a brief protesting the imposition of the franchise tax. This brief cited the case of *Clallam County v. United States* as controlling.⁴² The attorney general in changing his ruling remarked, "Although we don't agree, out of deference to authorities cited in the *Clallam County Case*, we must hold that the R.F.C. Mortgage Company is not liable for taxation in this state."

Despite the fact that the *Clallam* case has been cited to advantage in achieving franchise tax immunity for the corporations, the actual litigation concerned a somewhat different question. The state of Washington had levied taxes on the physical property of the Spruce Production Corporation, a war-time company owned by the United States. The federal government brought suit to cancel these tax levies, claiming immunity under *McCulloch v. Maryland*. The state contended that although the means of carrying on the government might not be taxed, taxation of the property of the Spruce Production Corporation did not interfere with the functions of the federal government and therefore did not fall into the former category. In this case and on other occasions in different cases all attempts at state taxation of the war-time corporations were declared invalid by the Supreme Court.⁴³ The *Clallam Case* has been cited frequently when a precedent was needed for the

⁴¹ Op. At. Gen., N. C. to Commissioner of Revenue (April 23, 1935), (Sept. 7, 1935), p. 213.

⁴² 263 U. S. 341 (1923).

⁴³ Van Dorn, *op. cit.*, p. 286. *Schlosser v. Welsh*, 5 F. Supp. 993, 1000, 1001 (1934). See citations of cases involving taxation of instrumentalities.

exemption of post-war corporations from property taxes of states. The Montana Attorney General cited the Clallam Case when he exempted lands purchased by the Federal Subsistence Homesteads Corporation from taxation.⁴⁴

Scrutiny of the most recent decisions of the Supreme Court reveals some disposition on its part to recede from its absolute

44 Op. At. Gen., Mont. vol. 1932-1934, p. 448 (Nov. 28, 1934). Op. At. Gen., Col. (Jan. 28, 1935) ruled that property acquired by the Rural Rehabilitation Corporation, or its subsidiaries, was not subject to general taxation.

See also: Wash. Laws 1933, ch. 104, p. 422. All real property purchased in whole or in part with R. F. C. funds is classified as property affected with a public interest. "In determining the valuation for taxation purposes, of any such property, the county assessor shall first determine the assessed value of said property and shall also ascertain the amount or amounts due, owing or unpaid to the Reconstruction Finance Corporation of the United States on such loan or loans. He shall thereupon deduct the amount or amounts due, owing or unpaid on such loan or loans from the value of said property as determined by him, and the excess in the value of such property as determined by him over the amount of such loan or loans shall represent the value of said property and shall be subject to assessment and taxation as other property used for like purposes."

N. Y. Laws 1935, ch. 305, p. 803, exempts mortgage loan corporations whose stock is held by "...United States of America, or a department thereof, or a corporation whose entire capital stock is owned by the United States of America..." from all taxes, license requirements and fees levied or imposed by the state.

N. D. Laws 1935, ch. 224, p. 313, sec. 2. "That all funds which may have been or may hereinafter be made available to the North Dakota Rural Rehabilitation Corporation by the Federal Emergency Relief Administration or any other agency or instrumentality of the Federal Government and any and all personal property purchased with such funds or held by said corporation and any payments received by the corporation on loans made and as proceeds of property sold, be and the same is hereby exempted from all taxation by the State of North Dakota or any of the political subdivisions thereof; provided . . ."

S. C. Laws 1935, act 340, p. 487, sec. 4. "That the said South Carolina Rural Rehabilitation Corporation and its property be exempt from any and all forms of taxation and that it shall have the same privileges and immunities that each and every other department or agency of the State of South Carolina has as all funds made available to said Corporation by the United States Government or otherwise are for the purpose of rehabilitation, relief and welfare of needy and deserving portions of the population of South Carolina."

position of property tax immunity which it had held from 1920 to 1930. A case in point is *Taber, Treasurer of Payne County, Oklahoma, v. Indian Territory Illuminating Oil Co.*⁴⁵ The Court upheld a non-discriminatory ad valorem tax imposed by the state on a lessee of land owned by the Pawnee Indians, even though the lessee might be considered a federal instrumentality. The decision distinguished between a non-discriminatory tax upon the property of an agent of the government and one which imposes a direct burden upon the exertion of governmental powers. While it would be unwise to place too great emphasis on the case in this context, it might furnish a useful precedent in the future if the Supreme Court should wish to break away from the ruling in the *Clallam* case. Such a precedent might well be added to the series which, although ignored from time to time, had its inception early in our constitutional history.⁴⁶

It seems comparatively simple to secure immunity from state taxation of franchise and property taxes. It is when the corporations attempt to extend this exemption to motor vehicle license and to sales taxes that they meet with greater state resistance. For, as Mr. Justice McReynolds pointed out in his dissenting opinion in the case of *Panhandle Oil Co. v. Mississippi, ex rel. Knox*,

I am unable to think that every man who sells a gallon of gasoline to be used by the United States thereby becomes a federal instrumentality, with the privilege of claiming freedom from taxation by the State.⁴⁷

The *Panhandle Oil Case* decided by a vote of five to four that a state sales tax upon the selling of gasoline measured at so many cents a gallon is void under the federal constitution when

45 300 U. S. 1 (1937).

46 *Thomson v. Pacific R. R.*, 9 Wall. 579, 591 (1869); *R. R. Co. v. Peniston*, 18 Wall. 5, 31-36 (1873); *Alward v. Johnson*, 282 U. S. 509, 512-514 (1930); *Tirrell v. Johnston*, 293 U. S. 533 (1934); *Indian Territory Illuminating Oil Co. v. Board of Equalization of Tulsa County*, 288 U. S. 325 (1933).

47 277 U. S. 218, 225 (1928).

the sale is made to instrumentalities of the United States such as the coast guard fleet and a veterans' hospital.

Using this case as their authority, the New Deal government corporations tried to achieve immunity from sales taxes on a variety of commodities, most often on gasoline. A state which did not wish to be bound by this decision, like Nebraska, could argue that immunity from the gasoline tax had been granted with great reluctance in the *Panhandle* case; that the decision had since been severely criticized; and that the Supreme Court would probably not extend it.⁴⁸ The Nebraska law office maintained further that although the statute under which a federal corporation came into existence did provide for tax exemption, this referred only to direct taxes, since the effects of other forms of taxation are too remote to be any burden on the federal government. In addition, the opinion pointed out that the money was used largely to keep up the highways and urged that the tax was valid therefore as a compensation for the privilege of using the convenience afforded by the states.⁴⁹ Some states have granted exemption from sales taxes although the legal officers of the state have not always been convinced of the correctness of the position that they were constrained to take. The Attorney General of Wisconsin sounded the doubtful note when he said, "However, whether sound or not, the *Panhandle* case is authority for the proposition that gasoline sold to the United States or its instrumentalities is exempt from state taxation. . . ." ⁵⁰

48 Articles criticizing this decision: 42 *Harvard Law Review* 128 (1928); 27 *Michigan Law Review* 225 (1928); 13 *Marquette Law Review* 117 (1929); 23 *Illinois Law Review* 707 (1929).

49 Op. At. Gen., Neb. (June 11, 1935).

50 Op. At. Gen., Wis., vol. 25 at p. 684 (Nov. 26, 1936). In some states immunity is taken for granted. In certain others when the question is raised immunity is readily given. See: Op. At. Gen., N. Y., p. 256 (January 24, 1933) in which national farm loan associations and joint stock land banks are held exempt from the tax on motor fuel imposed by Article 12-A of the Tax Law. Op. At. Gen., Ind., p. 180 (May 17, 1935), in which the Farm Credit Administration is declared exempt from the Indiana Sales Tax on gasoline.

No case dealing with the applicability of a sales tax to government corporations has reached the Supreme Court, nor has the tribunal consented to review such a case to date. Only recently it refused to issue a writ of certiorari in *Johnson, Treasurer of California, et al. v. M. G. West Co.*, a California case involving this problem.⁵¹ The litigation arose over the question whether gross receipts of sales made by a retailer of furniture who sold to the Federal Land Bank, to the Federal Intermediate Credit Bank of Berkeley, to the Berkeley Bank for Cooperatives and to the Production Credit Corporation of Berkeley were taxable under the California Retail Sales Act of 1933. The retailer paid his tax under protest and then sued to recover. The state's defense was threefold: first, that the law was designed to tax the retailer, a private person, and not the instrumentality of the government; second, that the decision in *South Carolina v. the United States* if applied reciprocally ought certainly to apply to credit institutions; and third, that this type of tax was not specifically prohibited in any section of the acts of Congress which created the government corporations in question. The court ruled against all these contentions. The opinion said in part:

The fact that the seller and not the purchaser is required to report and make payment to the state has been held to be immaterial. The excise tax, as we have shown, is passed on and becomes an added burden to the purchaser. That it is immaterial as to who makes the report and pays the tax to the state, we gather from the language of the Supreme Court of the United States in *Panhandle Oil Co. v. Mississippi*. . . .⁵²

As to *South Carolina v. the United States* the court was convinced that the activities carried on by the agencies concerned were in their essence governmental, thereby distinguishing the

⁵¹ 66 P. (2) 1211 (1937) (Cal.) Cert. denied, 302 U. S. 638 (Mem.) (1937).

⁵² 66 P. (2) 1211, 1213 (1937) (Cal.) Cert. denied, 302 U. S. 638 (Mem.) (1937).

two cases. With regard to the third contention, the opinion set forth the view " . . . that governmental instrumentalities are not subject to state taxation unless expressly so specified by an act of Congress."⁵³ The court excluded as irrelevant the fact that Congress did not specifically prohibit this type of tax. It therefore decided in favor of tax immunity and cited as its precedent the often criticized Panhandle Oil case. The refusal of the Supreme Court of the United States to issue a writ of certiorari might indicate that that Court did not intend to reverse its earlier five to four decision.

As a matter of fact the Supreme Court in the recent decision of *Graves, Governor of Alabama, et al. v. Texas Company*, has even extended the principle of the Panhandle decision.⁵⁴ The new case involved the enforcement of an Alabama excise tax "on storing and withdrawing of gasoline," whether for sale or otherwise. Litigation resulted because of Alabama's attempt to tax gasoline stored in Alabama and withdrawn and sold to several government agencies including the T.V.A. The state attorney general had previously ruled that this tax was essentially different from the sales tax condemned in the Panhandle decision. For he considered that under the Alabama law the tax was not laid upon the sale but upon the process of storage and subsequent withdrawal. On appeal to the United States Supreme Court, a six to two decision declared the tax invalid because it constituted a burden on the federal government. Mr. Justice Butler speaking for the court said:

Plainly, the sales and deliveries by the company to the United States necessarily include storing and withdrawal from storage. A tax upon anything so essential to the sale of the gasoline to the United States is as objectionable as would be a tax upon the sale itself. . . . So far as concerns the federal immunity from state taxation, a tax upon storing or withdrawal so involved cannot be distinguished from the tax on sales imposed by the Mississippi statute condemned as unconstitutional.⁵⁵

⁵³ *Ibid.*, at p. 1212.

⁵⁴ 298 U. S. 393 (1936).

⁵⁵ *Ibid.*, at p. 401.

In a stirring dissent Mr. Justice Cardozo portrayed the dangers of extending the rule of the *Panhandle* case "to new bounds."⁵⁶ He pointed out that if tax immunity can now be claimed for stored gasoline to be sold ultimately to the government the next logical step would be to claim immunity for oil still in the process of being refined, which process is as much preliminary to sale as is the storage stage. Mr. Justice Cardozo concluded his dissent by saying that the burden, if any, was too remote and too indeterminate to be taken into consideration.

A few states which granted immunity from gasoline taxes demanded proof that they were dealing with a federal instrumentality prior to allowing such exemption. The evidence they requested consisted of the filing of tax exemption blank, form 1094, furnished by the General Accounting Office. This caused some friction, particularly on the part of officials of the Farm Credit Administration who insisted that since the Federal Land Bank does not operate on a federal appropriation but is financed by capital stock and the income derived therefrom, they were not required to use the certificate issued by the Comptroller General's Office. Farm Credit had drawn up its own form which it wished the state to accept.⁵⁷ An attorney general in Indiana ruled that either form might be used.⁵⁸ In Wisconsin the ruling was that the state treasurer might insist on their following the form decided on by the United States Comptroller General.⁵⁹ In this matter Farm Credit manifests what appears to be a typical desire of the corporations to eat their

⁵⁶ Mr. Justice Brandeis joined in this dissent.

⁵⁷ Sample form used by the Farm Credit Administration of Omaha: I certify that I have this _____ day of _____ 1938 purchased _____ gallons of gasoline at _____ per gallon and _____ quarts of oil at _____ per quart exclusive of state tax for use on business of the _____ of Omaha, a corporation exempt pursuant to acts of Congress, from motor fuel tax imposed by any state from (Name of Dealer) _____ and the quantity purchased was actually delivered to automobiles bearing license plates Number _____
Signature of Purchaser.

⁵⁸ Op. At. Gen., Ind., p. 180 (May 17, 1935).

⁵⁹ Op. At. Gen., Wis., vol. 25, p. 683 (Nov. 26, 1936).

pie and have it, too. That is, when the question of state taxation or regulation is up for consideration they insist that they are an intrinsic part of the government; but when asked to comply with the requirements of other government departments they produce evidence of their subtle dissimilarities.

The government corporations have not been content with merely resisting sales taxes on gasoline; in addition they have even refused to pay motor vehicle license taxes.⁶⁰ Some of the corporations report that their failure to pay state motor vehicle license fees has never been questioned. T.V.A. has used special authority license plates without any difficulty.⁶¹ The only aspect of this question which seems to have reached the courts is found in three cases in South Carolina which were joined at the appeal stage.⁶² The Federal Land Bank and the Federal Intermediate Credit Banks of Columbia, South Carolina, were involved in a suit to recover motor vehicle license taxes paid under protest. South Carolina maintained that the plaintiffs were not an intrinsic part of the United States Government but were rather individual corporations engaged in business for the private profit and advantage of their stockholders. In addition, the state claimed that such a tax was merely a valid exercise of the police power which was a paramount power of any sovereignty. The court ruled in favor of tax immunity, holding "that the state cannot in the exercise of its police power impose a burden upon a federal instrumentality; that Federal Land Banks, together with their property and income, which consists

⁶⁰ Interview with Farm Credit Administration, Jan. 25, 1937. Letter from Home Owners' Loan Corporation, March 12, 1938. This letter assumes that the courts are bound by the Panhandle case. The letter continues, however, that "where material is bought by independent contractors for use on property taken over by the Home Owners' Loan Corporation the solution is probably less certain." The case of *Trinity Farm Construction Company v. Grosjean*, 291 U. S. 466 (1934) tends to support the position that the independent contractor is not exempt from the payment of a sales tax imposed on material or merchandise purchased by an independent contractor for property mortgaged to this corporation.

⁶¹ Letter, dated April 22, 1937, from General Counsel of T. V. A.

⁶² 173 S. E. 284 (1934) (S. C.).

of mortgages and bonds and the income therefrom, are instrumentalities of the United States, and are exempt from federal, state, municipal, and local taxation under the Act of Congress; . . ."⁶³ It may be questioned whether this tax may be properly characterized as a burden on the federal government. Possibly the tax ought to be considered as merely covering the administrative cost of maintaining the service, namely, keeping the roads in repair.

The role played by Congress offers an interesting complementary problem to the whole tax immunity question. Is Congress interested in reserving to the states their full tax resources? The evidence conflicts. On March 20, 1936⁶⁴ Congress enacted a law intended to overcome the United States Supreme Court decision of *Baltimore National Bank v. State Tax Commission of Maryland*.⁶⁵ This case had involved the right of the State of Maryland to tax preferred stock of national banks even when owned by the R.F.C. The right had been questioned by the R.F.C. because it claimed to be a federal instrumentality whose purpose was the rehabilitation of finance for the benefit of the country as a whole. It urged further that the act of Congress setting up the R.F.C. provided that the corporation, its franchises, capital, reserves, surplus and income were to be free from state taxation.⁶⁶ The United States Supreme Court, hearing the case on a writ of certiorari ruled in favor of Maryland's right to tax such national bank shares.⁶⁷ Mr. Justice Cardozo, writing the opinion for the Court, held that Congress had given its consent to such taxation and thereby forestalled the necessity of a decision on the basis of the actual problem. He found this consent in a Congressional act passed prior to

⁶³ 173 S. E. 284, 286 (1934) (S. C.).

⁶⁴ 49 Stat. 1185; 12 U. S. C. A. 51 (March 20, 1936).

⁶⁵ 297 U. S. 209 (1936).

⁶⁶ 47 Stat. 9, sec. 10; 15 U. S. C. A. 610 (Jan. 22, 1932).

⁶⁷ The writ was probably issued because of the diverse decisions on this question in the different courts. See: *United States v. Lewis et al.*, 10 F. Supp. 471 (1935); *State Tax Comm. of Maryland v. Baltimore National Bank*, 180 A. 260 (1935) Cert. granted, 297 U. S. 209 (1936).

the setting up of the R.F.C. which had its own tax exempt provisions. By the earlier act "all" the shares of national banks whose principal place of business is within the limits of a state are made subject to taxation at the pleasure of the legislature.⁶⁸ The court ruled further that the word "all" was controlling despite a subsequent statute which gave tax exemption to the R.F.C. Citing an earlier decision, Mr. Justice Cardozo said:

. . . . "It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling."⁶⁹

The word "all" was held to be "uncompromising."

Following the decision the Committee on Banking and Currency reported to Congress that if the R.F.C. was compelled to pay these state taxes its financial structure would be jeopardized. The committee reiterated the purposes for which the R.F.C. had been established, namely, to make available capital funds at low rates. It pointed out that the R.F.C. was paying $2\frac{3}{4}$ per cent to the Treasury for its money and was lending it at $3\frac{1}{2}$ per cent which left it but a slight margin for administrative costs and losses. If the R.F.C. was compelled to pay state taxes this margin would be obliterated. It recommended, therefore, that since the decision was based on the consent granted by Congress, this consent should be legislatively revoked. The R.F.C. prepared a bill to take care of the situation and to avert further trouble it included a provision for exemption of R.F.C. shares of state as well as national banks.⁷⁰ There was some

68 44 Stat. 223; 12 U. S. C. A. Sec. 548 (March 25, 1926).

69 297 U. S. 209, 215 (1936).

70 Op. At. Gen., N. D., vol. 1932-34, p. 315 (March 2, 1934) holding "... The state tax upon bank stock... applies to all of the shares of stock of every bank and every loan and trust company located in this state whether organized under the laws of this state or of the United States or of any other state or country..."

Op. At. Gen., Conn., volume for two years ending Jan. 4, 1935, p. 346 (Dec.

opposition to the bill from those who wished to reserve for the state the right to tax shares of state banks.⁷¹ The opposition was not very strong and the bill became law barely seven weeks after the adverse decision had been handed down.⁷²

Immediately the attorney general of Colorado attacked the law because it was designed to operate retroactively.⁷³ He indicated that he did not feel bound by this section of the act and ordered his county assessors not to expunge such levies from their assessment list.⁷⁴ In the main, however, this particular question can be regarded as settled.

It is important to notice that Congress was prepared to deprive states of revenue without much hesitation. It may be pointed out that there was considerable Congressional resistance to the inclusion in the T.V.A. Act of provisions for pay-

28, 1934) ruled that no deductions should be allowed for the value of shares of stock owned by the R. F. C. in state banks.

Per Contra:

Op. At. Gen., Col., p. 182 (May 26, 1934) considered that shares of preferred stock issued by state banks and owned by the R. F. C. were exempt from state taxation.

Op. At. Gen., Miss., p. 45 (Feb. 12, 1936) considered that preferred stock in banks in this state was exempt from taxation when said stock is held by R. F. C.

Op. At. Gen., Mich., p. 357 (Jan. 17, 1936) considered preferred stock held by R. F. C. in state banks exempt.

Op. At. Gen., S. D., p. 66 (April 26, 1934) considered that debentures of state banks held by R. F. C. were not subject to taxation.

Op. At. Gen., Mont., vol. 1932-1934, p. 281 (Nov. 29, 1933) holding that preferred stock given to R. F. C. by state and national banks was exempt from taxation.

⁷¹ 25 *Georgetown Law Review* 134-139 (1936).

⁷² Decision of case Feb. 3, 1936.

⁷³ "... the shares of preferred stock of national banking associations and the shares of preferred stock, capital notes and debentures of State banks and trust companies heretofore or hereafter acquired by Reconstruction Finance Corporation, and the dividends or interest derived therefrom by the R. F. C., shall not, so long as R. F. C. shall continue to own the same be subject to any taxation by the U. S. . . . or by any state, county, municipality or local taxing authority . . . " 49 Stat. 1185, ch. 160; 12 U. S. C. A. 51 d (March 20, 1936).

⁷⁴ Op. At. Gen. (May 14, 1936).

ments in lieu of taxes. These were to offset state tax losses. In opening the discussion Representative Snell remarked:

I do not want to enter into any extended discussion of the matter, but so far as I am personally concerned, and I am absolutely honest about it, I cannot see any reason in God's world why we should pay these two States 5 percent of the gross proceeds, and I doubt if anybody can present a logical reason for doing this. We are going in there and spending our money at the request of the States. These people want us to come there and make this development; is not that correct? ⁷⁵

Mr. Frear: The proposal to require the Federal Government as an initial proposition to provide a tremendous power plant free of expense to the people of Alabama and Tennessee and in addition require a 5 percent gross-earnings tax to be paid to these States beginning from the time the power is sold . . . is beyond understanding . . . ⁷⁶

Mr. Ludlow continued the discussion: I shall never vote to perpetrate a wrong, if I know it, and in my judgment this conference agreement unjustifiably and indefensibly wrongs the taxpayers of the United States when it obligates, as a gift to the States of Alabama and Tennessee, 5 percent of the gross proceeds . . . ⁷⁷

The vehemence of this oratory causes one to wonder whether it was actually inspired by a statesmanlike concern for the economy of the country as a whole as against the tax needs of Alabama and Tennessee. Or was it merely evoked by the exigencies of practical politics? Or finally did it simply form part of a general scheme to embarrass the public power program?

Despite the heat of this debate the very next Congress included provisions for payments in lieu of taxes in legislation for the Resettlement Administration ⁷⁸ and the Public Works

⁷⁵ 77 Cong. Rec. 3595 (May 17, 1933).

⁷⁶ *Ibid.*, at p. 3601 (May 17, 1933).

⁷⁷ *Ibid.*, at p. 3602 (May 17, 1933).

⁷⁸ 49 Stat. 2036, Sec. 2; 40 U. S. C. A. 432 (June 29, 1936).

Administration.⁷⁹ The amount to be given in lieu of taxes was left flexible. The law reads:

Such sums shall be fixed in such agreement and shall be based upon the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such State or subdivision or other taxing unit from such project.

The flexible character of this provision may be the result of the lesson learned from the earlier T.V.A. Act. While this type of provision gives rise to its own set of complicated legal and administrative adjustments as to costs and services, it is to be preferred to a law which chooses a definite sum in advance without any opportunity to consider the equities actually involved.⁸⁰

Payment in lieu of taxes furnishes one practical legislative solution to a multitude of petty but vexatious tax questions. In any event it would probably avoid the writing of volumes of attorneys general opinions to decide, for example, whether the Federal Farm Mortgage Corporation is justified in resisting the one dollar tax required of persons in Wisconsin who wish to commence a civil action.⁸¹

The possibility of a judicial solution seems remote. If it attempted to differentiate between the governmental and pro-

79 49 Stat. 2026, Sec. 2; 40 U. S. C. A. 422 (June 29, 1936).

80 Mr. Monroe Oppenheimer, Acting General Counsel of Resettlement Administration, June 30, 1936 (*G. C. Memo No. 136*) in which he said: "... These provisions present complicated administrative and legal questions which are now being studied. Difficult problems of public finance and accounting are involved in determining what particular services can be considered under this section, what the cost of such services are and how the total cost of any particular public service should be prorated between the project and the balance of the property within the taxing unit. ... It should be carefully noted that this section requires there be 'taken into consideration the benefits to be derived by such State or Subdivision or other taxing unit from such project' ... This is another difficult question which is now being studied."

81 Op. At. Gen., Wis., p. 495 (August 13, 1936).

prietary activities of the federal government it would lead the courts into an even greater morass. The Home Owners' Loan Corporation can be used for purposes of illustration. Superficially, this corporation would seem to be engaging in a proprietary activity—the banking business. Yet it resembles the ordinary government department in almost every respect. The United States owns all the stock; no other person can own any. It was created by act of federal officers under specific direction of an act of Congress and its directors are appointed by the President of the United States with the advice and consent of the Senate. Its bonds are guaranteed as to principal and interest by the United States. It has the use of the mails under a franking privilege. Upon liquidation the profits and losses become the assets and liabilities of the Treasury of the United States. The Criminal Code of the United States is extended to it. Its receipts are deposited in the Treasury of the United States. Its accounts are subject to audit by the General Accounting Office under an executive order of the President. It has its own tax exemption clause.⁸² In practice it fails to meet any of the tests required of a proprietary activity. It is clear that the terms proprietary and governmental become meaningless when measured by objective standards. A judicial attempt to define them could only result in the application of the collective economic philosophy of the bench to the cases brought before it.

The very recent Supreme Court decision of *Helvering, Com'r etc. v. Gerhardt* represents an attempt at a judicial solution by means of a reinterpretation of *McCulloch v. Maryland* and the cases leading therefrom.⁸³ This case will be discussed in some detail in the next chapter. It is doubtful however whether the *Gerhardt* case will be used as a precedent when a corporate activity of the federal government resists the attempted imposition of a state tax. Any effort to reach a final

⁸² File of Home Owners' Loan Corporation (Office Memo.).

⁸³ 304 U. S. 405 (1938).

judicial solution would be sure to result in years of litigation before all the implications could be considered.

Would the process of constitutional amendment solve the problem? This procedure has many disadvantages. Besides the great loss of time consumed in the amendment process, there is always the possibility that an amendment would be narrowed by judicial construction as was the sixteenth.

Provisions for payments in lieu of taxes authorized by Congress seem to be the most promising solution. These recognize that both the nation and the states need tax sources and that to dry up tax resources is to deprive a government of its motility. Such payments also recognize that in essence the problem is one of working out a fair sharing of tax sources. No amount of legal verbiage concerning sovereign immunity will solve the problem.

CHAPTER III

THE STATE SEEKS TO TAX THE INCOME OF EMPLOYEES OF GOVERNMENT CORPORATIONS

MAY a state income tax law reach the salary of an employee or officer of a corporation owned in whole or in part by the United States Government? The attorney general of the state of Georgia, in attempting to reach a decision on this question, issued three successive opinions during a nine-month period, each one reversing at least in part an earlier one.¹ The attorney general of West Virginia² exempts employees of the Home Owners' Loan Corporation from paying an income tax, while in South Dakota such employees must pay taxes.³ In Montana, R.F.C. and Regional Agricultural Credit Corporation officials are ordered to pay their income taxes by the attorney general's office.⁴ In Massachusetts to work for the R.F.C. is to be exempt from such tax.⁵ Apparently the spirit of home rule dominates the legal analysis of the question.

The offices of the general counsel for the government corporations consider that their employees ought not to be taxed under state income tax laws.⁶ Their reasoning follows the usual course. They urge that the central government is one of limited powers and therefore that any activity at Washington must arise from a specifically delegated power. Accordingly when Congress acts at all it must act in a governmental capacity.

1 Op. At. Gen., Ga. (Sept. 23, 1937), (Nov. 26, 1937), (Jan. 25, 1938).

2 Op. At. Gen., W. Va., to the Tax Comm. (Jan. 21, 1937).

3 Op. At. Gen., S. D., to the Director of Taxation (Sept. 2, 1937).

4 Op. At. Gen., Mont., to Income Tax Dep't., p. 415 (Sept. 10, 1934).

5 *Harry Alvin Saunders v. Commissioner of Corporations and Taxation*, B. T. A. Advance Sh. 13 (1935), 15 *Tax Magazine* 567, 568.

6 Letter from T. V. A. dated April 22, 1937, from Farm Credit Administration dated March 11, 1938, from Home Owners' Loan Corporation dated March 5, 1938.

Thus they avoid for the federal government the unworkable distinction made by *South Carolina v. the United States*. Another way of stating this position is: "A judicial concept of a state tax upon a federal non-governmental function means the possibility of a tax upon an unconstitutional federal instrumentality."⁷

Since the decision in *New York ex rel. Rogers v. Graves et al.*, some of the legal advisers to the government corporations consider that they have a definitive precedent and would like to view the question as closed.⁸ The Rogers case was concerned with the refusal of the general counsel of the Panama Railroad Company, a New York corporation, to pay an income tax on his salary. He claimed exemption on the ground that the corporation was wholly owned by the United States Government and was engaged in maintaining, operating and protecting the United States canal. Mr. Rogers believed that the corporation was thus exercising a governmental function which ought not to be interfered with by the New York State income tax law, even though such interference consisted merely in taxing the fixed salary paid to one of its officers. The Appellate Division of the Supreme Court of New York held that the railroad company was a governmentally controlled corporate agency engaged in a proprietary function and, therefore, was not immune from state taxation. This court considered that such taxation did not hinder or restrain "functions which are unquestionably, properly and usually governmental in their character."

The Supreme Court of the United States reversed the decisions of the state courts and ruled that the Panama railroad had always been used merely as an adjunct to the Panama Canal. The power to build the Canal was justified under the joint powers of defense and commerce. Mr. Justice Sutherland speaking for the Court then said:

⁷ 5 *Brooklyn Law Review* 330-332, *op. cit.*, p. 332 (1936).

⁸ 299 U. S. 401 (1937).

Such being the status of the canal, it requires no argument to demonstrate that all auxiliaries primarily designed and used to aid in its management and operation, and which have that effect, partake of its nature and are themselves coöperating regulators—or, perhaps more accurately speaking, constitute, with the canal, a single great regulator—of national and international commerce. And this, we think, is the effect of the interrelation of the railroad company's activities with the management and operation of the canal.

The Court, later in the case, said in addition,

We attach no importance to the fact that the railroad company has utilized both its ships and railroad to carry private freight and passengers. The record shows that this is done to a limited extent compared with the government business; and that it is only incidental to the governmental operations. The primary purpose of the enterprise being legitimately governmental, its incidental use for private purposes affords no ground for objection. . . . The railroad company being immune from state taxation, it necessarily results that fixed salaries and compensation paid to its officers and employees in their capacity as such are likewise immune.⁹

General counsel for agencies like the Home Owners' Loan Corporation, T.V.A. and Farm Credit urge that if an employee of a railroad organized under a state charter and carrying private traffic can be exempt from a state income tax, then certainly their employees must be exempt. They therefore consider the question no longer open.¹⁰ If this attitude were concurred in by the state courts, tax commissions, attorneys general and the current literature the question would indeed be settled.

Since the Rogers decision of 1937, a handful of cases dealing with corporate units of the Farm Credit Administration

⁹ 299 U. S. 401, 406, 407 (1937).

¹⁰ Letter from T. V. A. dated April 22, 1937, from Farm Credit Administration dated March 11, 1938, from Home Owners' Loan Corporation dated March 5, 1938.

and the R.F.C. have appeared in the state courts. These cases involve the same question previously raised in the Panama Railroad case. The decisions have for the most part maintained that the Rogers case does not control because "operation of the canal is really a governmental function" while corporations involved in the instant cases were considered to be engaged in "private" or "proprietary" activities. These courts would like to make *South Carolina v. the United States* and *Helvering v. Powers* apply to federal as well as to state activity.

A case in point is *Clinton v. State Tax Commission et al.*¹¹ The Supreme Court of Kansas ruled that a clerk who received a joint salary from the Federal Land Bank, Federal Intermediate Credit Bank, Production Credit Corporation and Bank for Cooperatives, all four being corporate units of the Farm Credit Administration, was not exempt from the state income tax. The judge considered that since such corporations "are not engaged in functions essentially governmental in character, . . ." ¹² there was no implied immunity from taxation. The court said in addition: "That the tax in the instant case is not a tax on the corporations—the instrumentalities themselves—is evident. That it does not cast a direct burden on their operations is equally clear." ¹³ The opinion then referred with approval to the case of *Helvering v. Powers*, which stands for the proposition ¹⁴ that a government may not depart from functions essentially governmental in character and enter into fields of business prevailingly private in their nature and yet demand protection behind a shield of implied immunity.¹⁵

11 71 P. (2) 857 (1937) (Kan.) Rehearing denied Oct. 16, 1937.

12 *Ibid.*, at p. 858.

13 *Ibid.*, at p. 860.

14 *Ibid.*, at p. 861.

15 For similar cases see *Parker v. Mississippi State Tax Commission*, 174 So. 567 (1937) (Miss.) Cert. denied, 302 U. S. 742 (1937). In this case a state income tax on the salary of a vice-president of a federal land bank was upheld. On Feb. 25, 1938 the Supreme Court of Missouri held that the salary of an employee of all four units of the Farm Credit Administration in Missouri was subject to the State Income Tax Law. Per contra see: current

Turning from the decisions made in the state courts and examining the opinions expressed by the attorneys general in the various states one finds the latter in complete disagreement. The attorneys general disagree as to the binding character of the Rogers decision when they enforce state income tax provisions against employees of other federal government corporations. Opinions of attorneys general rendered prior to that case and argued on principle are equally diverse.

In answer to a question addressed to him by the Regional Agricultural Credit Corporation, the attorney general of Montana replied that he did not feel bound by the Rogers case and that employees of this corporation would have to continue paying income taxes.¹⁶ He said:

Until the Supreme Court of the United States shall directly hold that employees of corporations owned and operated by the government in its proprietary rather than its governmental capacity are exempt from state income tax we feel bound by the Montana decision.

The attorney general was referring to *Pomeroy v. State Board of Equalization et al.*, decided two years earlier.¹⁷ This case held that a Montana law excluding salaries of employees of the United States from the calculation of "gross income" for tax computation purposes did not apply to salaries earned working for the R.F.C. The court ruled that an employee of the R.F.C. is not an employee of the United States. This conclusion was reached by analogy with some of the war-time corporation cases dealing with federal crimes. The court also quoted with

Kentucky case (Spring 1938) appeal to the Court of Appeals of the State of Kentucky in which the lower court held an officer of the Production Credit Corporation of Louisville exempt from the state income tax. *People ex rel. O'Keefe v. Graves et al.*, 253 N. Y. App. Div. 91 (3rd Dep't) (1937), which held that a salary of an attorney for Home Owners' Loan Corporation was not subject to personal income tax. Affirmed 278 N. Y. 221 (1938) Cert. granted No. 478 (Dec. 19, 1938).

¹⁶ Op. At. Gen., Mont. (March 13, 1937).

¹⁷ 45 P. (2) 316 (1935).

favor the case of *Helvering v. Powers*,¹⁸ which upheld a federal income tax on the trustees of the Boston Elevated Railway Company, a publicly managed corporation.¹⁸ The Supreme Court upheld the tax in the *Helvering* case because it decided that the state was engaged in a proprietary activity.

A digest appended at the end of this analysis will indicate the extent of the disagreement and confusion among attorneys general when they try to solve the problem. It is perhaps only fair to point out at this stage of the discussion that when the attorney general of Georgia changed his mind three times in one year on the exemptability of certain government corporate offices, he was only manifesting a reasonable sense of doubt.

The state tax commissions and boards of tax appeals issue rulings equally diverse in cases brought before them. In *Vance Planche v. Collector of Revenue*¹⁹ the Louisiana Board of Tax Appeals ruled that salary earned as district counsel of the Home Owners' Loan Corporation is not exempt from the state income tax, but the same board ruling on the same day held that the comptroller of the Inland Waterway Corporation is exempt from paying such tax.²⁰ They tried to substantiate a theory which it seems hard to defend: that when the government lends money to save homes it is acting in a proprietary mood, but when it operates barges to resurrect river traffic it is acting in its governmental authority.

The Minnesota Tax Commission says frankly in its *Income Tax Regulations*, Article 106 that

Due to the multiplicity of quasi-governmental organizations, such as the so-called alphabetical instrumentalities of the United States, like the C.W.A., the P.W.A. and others, the problem of determining the status of an individual with respect to the exemption of his income from these organizations is extremely involved. When-

¹⁸ 293 U. S. 214 (1934).

¹⁹ *Vance Planche v. Collector of Revenue*, Board of Tax Appeals (Jan. 11, 1938) C. C. H. Louisiana Tax Service.

²⁰ *J. S. Powell v. Collector of Revenue*, Board of Tax Appeals (Jan. 11, 1938) C. C. H. Louisiana Tax Service.

ever doubt exists in a person's mind as to the exemption of his income, he should request an opinion from the commission, as failure to ascertain his status will not relieve a tax payer from the penalties imposed if he does not report taxable income.

The Iowa State Board of Assessment and Review is less timid and is prepared to generalize: "Salaries, fees and commissions received by employees of the various United States government corporations, instrumentalities or agencies are not taxable under the Personal Net Income Tax Act."²¹ Like that of Iowa, the Mississippi Tax Commission is prepared to formulate a conclusion but reaches an entirely contradictory one.²²

To this array of confusing opinions the writers of current legal literature add their diverse interpretations of the law concerning the taxability of employees of national governmental corporations. Dr. Thurston of Northwestern University in his study entitled "Government Proprietary Corporations in the English-Speaking Countries"²³ has remarked in reference to the Rogers case,

. . . . The argument that the company (Panama Railroad Corporation) is engaged in commercial functions was rejected. Probably the court felt that the company is so vitally related to what are admittedly governmental functions that it could not be considered as truly proprietary, at least for purposes of taxation. Consequently, the case *hardly* determines the general question.

Referring to the same decision a note in the *Harvard Law Review* argues on the other hand that "The theory of the present opinions written by Mr. Justice Sutherland, however, seems to be that enterprises constitutionally undertaken by the United States are necessarily governmental and hence immune from state taxation; . . ." ²⁴

²¹ Ruling of Iowa State Board of Assessment and Review (Feb. 24, 1937) C. C. H. Iowa Tax Service.

²² Miss. Tax Comm. Regulations, Art. 89, C. C. H. Mississippi Tax Service.

²³ Thurston, John, *Government Proprietary Corporations in the English-Speaking Countries*, Harvard University Press, Cambridge, 1937, p. 85.

²⁴ 50 *Harvard Law Review* 980-981 at p. 981 (1937).

A recent refusal of the Supreme Court of the United States to issue a writ of certiorari in *Parker v. Mississippi State Tax Commission* may mean that at least this Court does not consider that the *Rogers* case states a definitive position or a rule capable of extension to other cases.²⁵ The *Parker* case was one in which a state income tax on the salary of a vice-president of a federal land bank (a unit under the Farm Credit Administration) was upheld by the State Supreme Court. The state court differentiated between the instant case and the *Rogers* decision.

Does all this variance of opinion result merely from the usual ambiguity of our federal system; or is it caused rather by the kind of activity involved; or finally does it arise because the corporate form is used? The corporate form has probably only slight bearing on the particular problem. The confusion exists even where the corporate form is not adopted. Employees of the non-corporate Federal Housing Administration are considered liable to state taxation by the attorneys general of South Dakota and Kentucky²⁶ and exempt by the attorney general of West Virginia.²⁷ The attorney general of Wisconsin, in an opinion dated March 11, 1937, ruled that an employee of the Rural Electric Administration must pay a state income tax. He said, "While this agency is not organized with a corporate structure yet its primary purpose is the loaning of money to various persons, businesses and corporations."

One of the underlying causes of all this contradiction is the valid fear on the part of the states of an ever increasing loss of income tax revenue concurrent with the expanding activities of the federal government.

It appears therefore that the question whether a state income tax law may reach the salary of an employee or officer

²⁵ *Supra*, p. 77.

²⁶ Op. At. Gen., Ky., to the Director of the Division of Income Taxation (July 13, 1937). Op. At. Gen., S. D., to the Director of Taxation (Sept. 2, 1937).

²⁷ Op. At. Gen., W. Va., to the Tax Com. (Jan. 21, 1937).

of a corporation owned in whole or in part by the United States can not be definitely answered. The problem will not be solved if the courts alone are looked to for a solution. Some of the states seem disposed to take the long slow route of litigation and appeal, considering the question afresh for each agency. Situations are differentiated where no true differences exist, in order that the legal authorities need not feel morally bound by precedents which might curtail sources of revenue. The state courts and the attorneys general by now have enough precedents at their disposal to enable them to preserve a semblance of following the law, no matter what decision they render.

Nor can a solution be sought in the federal courts, for these are hindered by the precedents which have emasculated the income tax amendment. There is as little chance of a solution through the specific application of the doctrine of *Helvering v. Powers* to the federal government.²⁸ Such a ruling would in turn raise the almost insoluble question as to the nature of the proprietary function.

In a fairly recent decision, the Supreme Court of the United States in the case of *Brush v. Commissioner of Internal Revenue* recognized again the difficulty of such definition.²⁹ The Court discarded two tests which proponents of the distinction between the proprietary and the governmental function consider valid; namely, that activities historically conducted by private enterprise or carried on for profit ought to be considered proprietary and hence taxable.³⁰

Rejecting the first test Mr. Justice Sutherland said,

We find nothing that detracts from this view in the fact that in former times the business of furnishing water to urban communities, including New York, in fact was left largely, or even

²⁸ *Supra*, p. 77.

²⁹ 300 U. S. 352 (1937). The Supreme Court held the salary of the chief engineer of the Bureau of Water Supply of the City of New York immune from federal income tax law.

³⁰ 23 *Virginia Law Review* 922-42 (1937).

entirely, to private enterprise . . . Governmental functions are not to be regarded as non-existent because they are held in abeyance, or because they lie dormant, for a time. If they be by their nature governmental, they are none the less so because the use of them has had a recent beginning.³¹

As to the second test, the opinion continued, “. . . If that service be governmental it does not become private because a charge is made for it, or a profit realized.”³² The Court ruled instead that where an activity carried on by a state supplies a service which is of importance to the public generally it is an essential governmental function and will be accorded immunity from federal taxation.

If the Supreme Court applied this test of “vital importance” to the corporate activities of the federal government one might well ask what recent activity could be called non-governmental?³³ There is no danger, however, that the decision in the *Brush* case will be made to apply to corporate activities of the federal government. The case is doomed to quick oblivion for it has already been limited by *Helvering, Commissioner etc. v. Gerhardt*, decided on May 23, 1938. The Supreme Court of the United States ruled in that case that an employee of the New York Port Authority was compelled to pay a federal income tax.³⁴ Mr. Justice Stone, speaking for a majority of the Court commented on its earlier decision in the *Brush* case as follows:

. . . . In *Brush v. Commissioner*, *supra*, the applicable treasury regulation upon which the Government relied exempted from income tax the compensation of “state officers and employees” for “services rendered in connection with the exercise of an essential governmental function of the state.” The sole contention of the

³¹ 300 U. S. 352, 371 (1937).

³² 300 U. S. 352, 372 (1937).

³³ 25 *California Law Review* 728-739, at p. 733 (1937).

³⁴ 304 U. S. 405 (1938). See also: *Helvering, Com'r. v. Therrell*, 303 U. S. 218 (1938).

Government was that the maintenance of the New York City water supply system was not an essential governmental function of the state. The Government did not attack the regulation. No contention was made by it or considered or decided by the Court that the burden of the tax on the state *was so indirect or conjectural as to be but an incident of the coexistence of the two governments, and, therefore, not within the constitutional immunity. If determination of that point was implicit in the decision it must be limited by what is now decided.*³⁵

The use of the test of the degree of burden on the state government has been heralded as a disposition on the part of the Court to reexamine the whole question of tax immunity.

The court refused to consider the question whether the test in the Port Authority case can be applied to a federal instrumentality. Speaking parenthetically the Court said, however,

We need not stop to inquire how far, as indicated in *McCulloch v. Maryland*, *supra*, the immunity of federal instrumentalities from state taxation rests on a different basis from that of state instrumentalities; or whether or to what degree it is more extensive. *As to these questions, other considerations may be controlling which are not pertinent here.*

Not waiting for the courts to cut the Gordian knot, the President of the United States in a special message to Congress on April 25, 1938, urged Congress to return to the plain language of the sixteenth amendment, which authorized it "to lay and collect taxes on incomes from whatever source derived." His message read in part:

I recommend, therefore, that the Congress enact legislation ending tax exemption on government salaries of all kinds, conferring powers on the States with respect to Federal salaries and powers to the Federal Government with respect to State and local government salaries.³⁶

³⁵ 304 U. S. 405 (1938).

³⁶ *New York Times*, sec. 1, p. 2, col. 5, April 26, 1938.

In another part of his message the President said:

. . . expressions in recent judicial opinions lead us to hope that the assumptions underlying these doctrines are being questioned by the court itself,

and therefore there would not be the necessity for resorting to another constitutional amendment.

The Port Authority case which was decided about one month after the President's special message showed certainly that the Court was in a questioning mood. If Congress should pass the desired legislation, what will the attitude of the courts be? Will they end the confusion in which state authorities now find themselves when they try to answer the question whether a state may tax the salary of an employee of a national government corporation.

Appended below is a summation, for reference purposes, of whatever state law there is on the instant question. The material has been collated from the *Commerce Clearing House Tax Service*, *The American Law Week*, state court reports, reports of attorneys general, correspondence and conversations with federal officials. The need for clarification is obvious.

SUMMARY — STATE LAW

1. ALABAMA

State income tax law contains the usual provisions that salaries, wages and other compensation received from the United States by its officers and employees need not be included in computing gross income. Apparently no problems have arisen.

2. ARIZONA

The statute provides that taxes shall not be construed to apply to incomes which, under the Constitution of the United States, the state of Arizona is prohibited from taxing.

3. ARKANSAS

See Alabama.

4. CALIFORNIA

Under California Income Tax Regulations, officers and employees of the following corporations and associations are not deemed to be engaged in essentially governmental functions. Accordingly their salaries are made subject to the California personal income tax if they are residents of California, or if their services have been performed within that state: Agricultural Credit Corporation, Commodity Credit Corporation, Electric Home and Farm Authority, Farm Credit Administration, Federal Deposit Insurance Corporation, Federal Farm Mortgage Corporation, Federal Housing Administration, Federal Land Banks, Federal Savings and Loan Insurance Corporation, Home Owners' Loan Corporation, Joint Stock Land Banks, Production Credit Associations, Reconstruction Finance Corporation, Reconstruction Finance Mortgage Company, Resettlement Administration, Rural Electric Administration. The regulations exempt, however, California Conservation Corps, Emergency Relief Administration, Works Progress Administration, Federal Surplus Commodity Corporation, and United States Housing Corporation.

5. COLORADO

Adopted tax 1937.

6. CONNECTICUT

No personal income tax.

7. DELAWARE

See Alabama.

8. FLORIDA

No income tax.

9. GEORGIA

Attorney General Opinion (January 25, 1938) revising opinions of (September 23, 1937) and (November 26, 1937). Employees of following organizations are subject to state income tax, where recipients are residents of Georgia: Home Owners' Loan Corporation, Reconstruction Finance Corporation, Federal Land Banks, Federal Intermediate

Credit Banks, Production Credit Corporation and Bank for Cooperatives. Employees of the following organizations are held exempt: Federal Housing Administration and Works Progress Administration, although the ruling of November 26, held employees of the Federal Housing Administration and Works Progress Administration subject to income tax. This changed a decision of September 23, 1937, holding employees of Home Owners' Loan Corporation, R.F.C., Federal Housing Administration and Works Progress Administration exempt.

10. IDAHO

See Maryland.

11. ILLINOIS

No personal income tax.

12. INDIANA

State income tax law provides that salaries and pensions paid by the United States or any of its agencies need not be included in computing gross income. Apparently no problems have arisen.

13. IOWA

Ruling of Iowa State Board of Assessment and Review, (February 24, 1937). Salaries, fees and commissions received by employees of the various United States government corporations, instrumentalities or agencies are not taxable under the personal income tax law.

Attorney General Opinion to State Board of Assessment and Review, (February 18, 1937). Federal land banks are not instrumentalities of the federal government and salaries and wages of its employees who are residents of Iowa are subject to state income tax. The opinion distinguishes this situation from the Rogers case.

14. KANSAS

Clinton v. State Tax Commission et al., 71 P. (2) 857 (1937). Salary received by a clerk and stenographer from Federal Land Bank of Wichita, Federal Intermediate Credit Bank of Wichita, the Production Credit Corporation of

Wichita and the Wichita Bank for Cooperatives are taxable under the income tax law of Kansas.

15. KENTUCKY

Tax Regulation, building and loan association employees organized under the laws of the United States and making loans to members are hereby exempt from payment of income tax.

Attorney General Opinion, to the Director of the Division of Income Taxation, (July 13, 1937). This opinion adopts the view that *Helvering v. Powers* is controlling. Therefore, that the employees of all the following must pay state income taxes: Commodity Credit Corporation, Farm Credit Administration, Federal Farm Mortgage Corporation, Federal Land Bank, Joint Stock Land Bank, Federal Intermediate Credit Bank, Federal Bank for Cooperatives, Production Credit Corporation, Home Owners' Loan Corporation, Reconstruction Finance Corporation, Federal Home Loan Bank, Federal Deposit Insurance Corporation, Federal Housing Administration, Federal Savings and Loan Insurance Corporation, Rural Electric Administration and T.V.A. This opinion quoted the *Pomeroy* case with favor. The opinion held employees of the Resettlement Administration and Works Progress Administration exempt.

Lower court case—Recently the General Counsel of the Farm Credit Administration of Louisville obtained a favorable decision from the lower court with respect to the taxability of the salary of an officer of the Production Credit Corporation of Louisville. That decision was affirmed by the Court of Appeals of the State of Kentucky on June 24, 1938. Notice that this lower court decision conflicts with the opinion of the Attorney General.

16. LOUISIANA

Vance Planche v. Collector of Revenue, Board of Tax Appeals, (January 11, 1938). Petitioner's salary earned as district counsel of the Home Owners' Loan Corporation held not exempt from a state income tax; the Board ruling that such a corporation was not engaged in essential govern-

mental functions. The Board quoted with approval *Clinton v. State Tax Commission*.

J. S. Powell v. Collector of Revenue, Board of Tax Appeals, (January 11, 1938). The Board ruled that the Inland Waterways Corporation is an instrumentality of the federal government engaged in essential governmental functions. Accordingly, the salary of the petitioner who was employed as comptroller of the corporation during 1934 and 1935 is exempt from the state income tax. The Board does not consider that the *Rogers* case controls but cites with approval *Parker v. Mississippi State Tax Commission. Supra.*

17. MAINE

No personal income tax.

18. MARYLAND

A 1937 law excludes from computation in gross income, income which the state is prohibited from taxing under the Constitution of the United States or by any act of Congress passed pursuant thereto. Apparently no problems have arisen yet.

19. MASSACHUSETTS

Harry Alvin Saunders v. Commissioner of Corporations and Taxation, 1935 Board of Tax Appeals, Advance Sheets 13. The Board ruled that an employee of the Reconstruction Finance Corporation is an employee of an instrumentality of the United States created and controlled by it exclusively to enable it to perform a governmental function.

20. MICHIGAN

No personal income tax.

21. MINNESOTA

Income Tax Regulations, Article 106. "Due to the multiplicity of quasi-governmental organizations, such as the so-called alphabetical instrumentalities of the United States like the C.W.A., the P.W.A. and others, the problem of determining the status of an individual with respect to the exemption of his income from these organizations is

extremely involved. Whenever doubt exists in a person's mind as to the exemption of his income he should request an opinion from the commission, as failure to ascertain his status will not relieve a taxpayer from the penalties imposed if he does not report taxable income."

22. MISSISSIPPI

Parker v. Mississippi State Tax Commission, 174 So. 567, Cert. denied United States Supreme Court November 1937. The court held that the salary of a Mississippi resident who is an officer of a federal land bank is subject to the state income tax. The court distinguished this case from the *Rogers* case on the ground that in the latter instance the United States was acting in its governmental capacity.

Article 89 of Tax Commission Regulations provides that salaries received by officers and employees of Federal Land Banks, Home Owners' Loan Corporations, and similar corporations constitute a part of the taxable income of such persons.

23. MISSOURI

State ex rel. Baumann v. Bowles, 115 S. W. (2) 805, Rehearing denied April 21, 1938. The court held that the salaries of employees of the Farm Credit Administration, are subject to the Missouri Income Tax.

24. MONTANA

Pomeroy v. State Board of Equalization et al., 45 P. (2) 316. The Supreme Court of Montana ruled that a state law excluding salaries of employees of the United States from inclusion in calculating gross income did not apply to employees of the Reconstruction Finance Corporation.

Opinion of the Attorney General to the Regional Agricultural Credit Corporation, (March 13, 1937). Employees of Reconstruction Finance Corporation, and Regional Agricultural Credit Corporation of Spokane are not immune from the state income tax on the salaries received by them from such corporations. Apparently this question was being asked for the second time because of the *Rogers* case. The Attorney General said in answer that the operation of the

Panama Railroad is incidental to running the canal which was obviously a governmental function. He therefore felt that he was not bound by this Supreme Court decision.

Opinion of Attorney General to Supervisor, Income Tax Department, State Board of Equalization (September 10, 1934). The Attorney General said that officers and employees of the Reconstruction Finance Corporation, the Regional Agricultural Credit Corporation, the Spokane Bank for Cooperatives and similar institutions, who reside in the State of Montana are subject to payment of an income tax on their salaries or wages.

25. NEBRASKA

No personal income tax.

26. NEVADA

No personal income tax.

27. NEW HAMPSHIRE

No problems seem to have arisen.

28. NEW JERSEY

No personal income tax.

29. NEW MEXICO

Tax Regulations, Article 56, provides that in order to be exempt from the state income tax law the compensation must be received by an official or employee of the United States as distinguished from an independent contractor. Apparently no problems have arisen.

30. NEW YORK

People *ex rel.* O'Keefe *v.* Graves *et al.*, 253 N. Y. App. Div. 91 (December 29, 1937). Affirmed 278 N. Y. 221 (1938) Cert. granted, No. 478 U. S. Sup. Ct. (Dec. 19, 1938). The lower court ruled that the salary of an attorney for the Home Owners' Loan Corporation was not subject to a personal income tax. There however was a strong dissent.

Attorney General Opinion (May 9, 1933), provided that the salaries of officers and employees of the Regional Agricultural Credit Corporation of Albany if earned within the state or if received by them as residents, were taxable.

31. NORTH CAROLINA

Opinion of the Attorney General to the Commissioner of Revenue (May 19, 1937), ruled that the salaries of employees of joint stock land banks are subject to the state income tax. The decision was based on the notion that the tax would not in any sense interfere with the activities of the federal government or in any way be a burden upon the same.

32. NORTH DAKOTA

See Alabama.

33. OHIO

No personal income tax.

34. OKLAHOMA

Tax Regulations provide that salaries, wages and other compensation received directly from the United States by officials or employees thereof including persons in the military or naval forces of the United States are to be exempt. No direct question seems to have arisen on the instant question.

35. OREGON

Guy F. Atkinson Company, appellant *v.* State Tax Commission of Oregon, *et al.*, United States Supreme Court, No. 303, January 31, 1938. The Court maintained that the net income of the appellants derived from their work within the state of Oregon in the construction of the Bonneville Dam on the Columbia River is taxable under the Personal Income Tax Law of Oregon.

36. PENNSYLVANIA

No personal income tax.

37. RHODE ISLAND

No personal income tax.

38. SOUTH CAROLINA

See Alabama.

39. SOUTH DAKOTA

Attorney General Opinion to the Director of Taxation, (September 2, 1937), provided that the employees of the following organizations are not exempt from the state income tax: Home Owners' Loan Corporation, Joint Stock Land Banks, and Federal Land Banks.

40. TENNESSEE

No personal income tax.

41. TEXAS

No personal income tax.

42. UTAH

Van Cott v. Utah State Tax Commission, 79 P. (2) 6 (1938). This case denied the right of that state to impose an income tax on the salary of an attorney representing the Regional Agricultural Credit Corporation of Salt Lake City and also the Reconstruction Finance Corporation. Cert. granted, No. 49, U. S. Sup. Ct. (Jan. 3, 1939).

43. VERMONT

See Alabama.

44. VIRGINIA

See Alabama.

45. WASHINGTON

No personal income tax.

46. WEST VIRGINIA

Opinion of the Attorney General to the Tax Commission, (January 21, 1937). Salaries, wages and other compensation received from the United States by employees of the Home Owners' Loan Corporation are exempt from taxation.

47. WISCONSIN

Attorney General Opinion (March 11, 1937), exempts employees of Farm Credit Administration from state income tax, but holds employees of the following agencies liable: Federal Farm Mortgage Corporation, Federal Home Loan Bank, Federal Intermediate Credit Bank, Home Owners' Loan Corporation, Production Credit Corporation,

Reconstruction Finance Corporation, Regional Agricultural Credit Corporation, Federal Deposit Insurance Corporation, Federal Savings and Loan Association, Commodity Credit Corporation. The opinion then ruled as to Rural Electric Administration that "While this agency is not organized with a corporate structure yet its primary purpose is the loaning of money to various persons, businesses, and corporations and so are subject to the income tax."

48. WYOMING

No personal income tax.

CHAPTER IV

THE STATE REGULATES GOVERNMENT CORPORATIONS

THE attempt of the states to impose taxes is not the only cause for friction between a government corporation and a state. The government corporation objects equally to the necessity for compliance with state regulations. Laws are passed under the general police powers of the state, the exercise of which vary all the way from the attempted enforcement of local zoning requirements to state compensation laws. Certain specific problems arise repeatedly in connection with many of the government corporations. These involve liability to suit, attachment, garnishment, third party supplementary proceedings, application of foreign corporation laws, state labor and compensation codes. In addition, corporations which perform take title to real estate have to solve further problems. Therefore, organizations like the Home Owners' Loan Corporation, Federal Subsistence Homesteads Corporation and Federal Land Banks had to decide whether, as a matter of law or policy, they would obey municipal zoning requirements, building regulations, mortgage moratorium laws, and state escheat laws.

There are some questions which have confronted only a few of the corporations. The wide variety of these more specific problems is evident from a cursory examination. During the period of its activity Rural Rehabilitation Corporations were involved in cases resulting from attempts by states to deny the inhabitants of such areas the privilege of school attendance in retaliation for the failure of the corporations to pay local taxes. The T.V.A. in addition to its other many problems, was confronted early in its history with the demand that it appear before the Tennessee Public Service Commission. The Home Owners' Loan Act was the subject of litigation in the Supreme Court of the United States, to decide whether the provisions of the act could constitutionally permit the conversion of a

state building and loan association into a federal building and loan association without the consent of the state involved. One of the national farm loan associations was involved in a controversy which resulted from an attempt by state authorities to wind up the affairs of the association according to the provisions of a state law and under the jurisdiction of a state court, although it was a federal instrumentality. This was finally adjudicated by the Supreme Court of the United States. The North Carolina Rural Rehabilitation Corporation was confronted with a unique question. Could it be made to comply with state auditing laws although it was spending federal money only?

Some of these problems have been solved amicably at the attorney general level. Others have reached the courts. As might be expected from the foregoing survey of the problems in taxation, the decisions spell out no clear-cut legal doctrines. One notices that the courts are perhaps more inclined to require compliance with state regulations than to sanction the imposition of state taxation. But even this disposition can only be demonstrated sporadically, since the decisions point in several different directions. The problem is complex and the judges are hampered by long series of precedents.

In solving the cases judges have tried, although without much success, to reconcile several conflicting ideas. The various theories involved may be briefly summarized. The central government, while one of limited powers, is nevertheless preeminent within its sphere. In addition, it is important for the central government to be able to solve great national emergencies without being hampered too much by burdens imposed by states. On the other hand, the powers reserved to the states ought not to be infringed upon; for to do so would be to destroy the federal system. Superimposed upon these theories are doctrines of immunity from regulation which have been established by analogy to the doctrine of reciprocal tax immunity. This doctrine as applied to states includes the interpretation that when a state enters into a private business venture it loses its tax

immunity and can be reached by the federal government for tax purposes.¹ There is no question but that the central government is at present entering into new fields of activity which might be characterized by some as proprietary. According to this point of view state regulations apply to the proprietary activities of the government corporation.

All these theses have been incorporated at different times into decisions. When the question is asked whether a government corporation must obey state regulations, the answer cannot be given with any certainty, since an analysis of the decisions will show the present confused state of the law.

The entire first group of problems to be considered in this chapter pertains to the exercise of the state's police power when in conflict with the activities of a national government corporation.

One such problem resulted when units of the Farm Credit Administration refused to be bound by mortgage moratorium laws, passed by states for the very purpose of protecting the home owner during the depression. Farm Credit Administration held many mortgages on farms within the states and it claimed the right to foreclose when necessary to protect its interest regardless of state moratorium laws. There are now in effect, in fifteen states, moratorium statutes which confer the power upon state courts both to prolong foreclosure procedures for a limited period before sale and also to lengthen the period of redemption after foreclosure.² Of these fifteen states, six expressly exempt mortgages held by federal instrumentalities from the provisions of these laws.³ There were two reasons for conflict. Could the federal land banks, joint stock

1 South Carolina *v.* United States, 199 U. S. 437 (1905).

2 (*Office Memo.*) Farm Credit Administration, Digest of State Redemption and Moratorium Laws applicable to Mortgages of Real Property, January, 1938, p. iii (Mimeo.).

3 The six states are Pennsylvania, Louisiana, Minnesota, North Dakota, California, Montana. The Mississippi law contained a similar exemption. This was withdrawn in 1936. (Miss. Laws, 1936, ch. 287) No litigation has resulted from the withdrawal of this exemption.

land banks, and other units of the Farm Credit Administration be considered as instrumentalities of the United States within the six states which exempt mortgages? Secondly, could the laws of the other nine states which do not exempt mortgages owned by the United States or its instrumentalities affect foreclosure proceedings undertaken by units of the Farm Credit Administration or other agencies?

As to the first controversy, the weight of authority in the state courts holds that a state law exempting mortgages held by the United States or one of its agencies from the operation of state mortgage moratorium acts applies also to mortgages held by federal land banks and joint stock land banks.⁴ A typical case in point is *Leuthold v. Des Moines Joint Stock Bank of Des Moines, Iowa*.⁵ This case involved a proceeding by Jacob Leuthold for the extension of the time of redemption after a mortgage foreclosure sale. The action was opposed by the Des Moines Joint Stock Land Bank on the theory that the laws of Minnesota setting up a mortgage moratorium act expressly exempted mortgages held by the United States or by any agency thereof from its provisions.⁶ The joint stock land bank contended of course that it came under the exemption. It also claimed that the purpose of the exemption in the 1935 law was to secure to the land owners of Minnesota the continued aid of federal land banks and of joint stock land banks operating under the federal act. In its defense the bank cited sec. 971-973 of the federal act, in which provision is made for the Land Bank Commissioner to examine the laws of each state and to inform the Farm Credit Administration

4 *Leuthold v. Des Moines Joint Stock Land Bank of Des Moines, Iowa*, 266 N. W. 450 (1936) (Minn.); *Ellingson et ux. v. Iowa Joint Stock Land Bank of Sioux City, Iowa*, 264 N. W. 516 (1936) (S. D.); *Federal Land Bank of New Orleans et al. v. Tatum et al.*, 164 So. 319 (1935) (Miss.); *Dallas Joint Stock Land Bank of Dallas v. Ballard et al.*, 74 S. W. (2) 297 (1934) (Tex.); *Dallas Joint Stock Land Bank of Dallas et al. v. Dickson et al.*, 74 S. W. (2) 300 (1934) (Tex.).

5 266 N. W. 450 (1936) (Minn.).

6 Minn. Laws 1935, ch. 47.

whether in his judgment these laws provide adequate security to the holders of first mortgages. The possibility of an extension of the time of redemption might in the opinion of the administrator lessen the value of the security. The plaintiff on the other hand cited the leading case of *Federal Land Bank v. Priddy* to prove that joint stock land banks were privately owned corporations and therefore were not governmental agencies exempt under Minnesota law.⁷ The court attached little weight to the plaintiff's argument and decided the case in favor of the bank. It based its whole decision on the thesis that the purpose of the federal land banks and joint stock land banks was to ameliorate the condition of the farmers, that the state moratorium act was enacted for a like purpose, and that there had never been any intention to have these conflict in any way.⁸

Another aspect of the same problem presents itself in those states which have mortgage moratorium laws but which do not specifically exempt the United States or its agencies from the operation of these laws. Mr. Peyton R. Evans, General Counsel for the Farm Credit Administration, took the position that

In cases where states do not exempt from the operation of foreclosure moratoria laws mortgages held by the U. S. or its instrumentalities, it is our view that such mortgages are nevertheless exempt from the operations of these laws, in view of the fact that under general constitutional principles⁹ states may not interfere with the operations of the federal government.¹⁰

⁷ 266 N. W. 450, 452 (1936) (Minn.).

⁸ 266 N. W. 450, 453 (1936) (Minn.).

⁹ When Mr. Evans asserts "that under general constitutional principles states may not interfere with the operations of the federal government," there are of course a whole series of cases to which he can refer to prove his point. *Johnson v. Maryland*, 254 U. S. 51 (1920) held that the state of Maryland might not require United States mail drivers to secure drivers' licenses. This would amount to interference with the federal government.

Ohio v. Thomas, 173 U. S. 276 (1899) ruled that the governor of a National Soldiers' Home could make his purchases without regard to the state pure food laws. *Hunt, Governor of Arizona et al. v. United States*,

It is interesting to point out that under sec. 971-973 previously referred to, the Farm Credit Administration has refused to issue any further mortgages in only one state with a mortgage moratorium law and here the action was taken for other reasons as well. The failure to withdraw mortgage aid is due to two factors: the first is that the mere occurrence of a certain delay is not considered too prejudicial by the Farm Credit authorities; and the second that the state laws leave much to the discretion of the courts.¹¹ The result has been an avoidance of litigation on this point.

Another question which only affects corporations directly or indirectly interested in real estate ventures, arises in connection with the exercise of the state police power. The right of municipalities generally to set up classified building zones has been consistently upheld by the courts as a valid exercise of this power. The problem concerns itself with the extent to which governmental corporations must obey these laws. Counsels for these agencies are not in complete agreement as to their obligations. As a matter of general policy, however, the laws are usually obeyed. The reason is sometimes a very practical one. The Home Owners' Loan Corporation considers that it thus obviates a certain amount of sales resistance in a subsequent sale to private individuals.¹² Such resistance might well be increased by the fear that the same buildings when privately owned

278 U. S. 96 (1928) ruled that state hunting laws were not permitted to interfere with the authority of the United States over preserves in a national forest. *Arizona v. California*, 283 U. S. 423 (1930) ruled that the plans and specifications for Boulder Dam need not be submitted to the approval of the state engineer of Arizona despite the state statute which required this. For a further discussion of these cases see: Robinson, H., "Some Problems Confronting the Public Works Emergency Housing Corporation," 19 *Cornell Law Review* 548-579 at p. 559-562 (1934).

10 Letter dated March 11, 1938, from Mr. Peyton R. Evans, General Counsel, Farm Credit Administration.

11 (*Office Memo.*) Farm Credit Administration, Emergency State Mortgage Moratorium Acts, June 18, 1936, p. 5 (*Mimeo.*).

12 Letter dated March 12, 1938, from Mr. Aldrich Wyman, Home Owners' Loan Corporation.

would have to comply with the local regulations. Mr. Monroe Oppenheimer, as acting General Counsel of Resettlement Administration, recognized the validity of this argument. He said,

Even assuming, for example, that the Federal Government may build without regard to zoning ordinances, it is not known what the effect of such ordinances will be after the building is returned to private ownership. . . In this respect, the Resettlement Administration may, as a matter of policy, decide to build in accordance with state law, and dispose of it similarly.¹³

The General Counsel for the T.V.A. indicated that his corporation complied for reasons equally pragmatic.

While I do not believe that local laws of this type are applicable to the Authority, we made every attempt to observe them and to cooperate to the fullest extent with the various states and subdivisions thereof in achieving the purposes for which the zoning laws were enacted.¹⁴

From this evidence it may be assumed that compliance with state and local building regulations of various types is based on similar reasoning.¹⁵

The state police power has many ramifications. It ranges from the right of the state to set up building standards to the right to provide for employee welfare. In exercising this latter power conflicts may arise over the employee policy of the federal corporations. The exercise of concurrent jurisdiction in connection with workmen's compensation laws causes one of these conflicts. This question reached the litigation stage when a laborer employed on the Wheeler Dam in Alabama attempted

13 (*G. C. Memo. 144*) Resettlement Administration, p. 2, July 31, 1936.

14 Letter dated April 22, 1937, from Mr. J. F. Fly, General Counsel, T. V. A.

15 Letter dated March 12, 1938, from Mr. Aldrich Wyman, Home Owners' Loan Corporation; Robinson, *op. cit.*, p. 559, considered that this corporation ought to be exempt from state and local building regulations on the ground that it is a federal instrumentality with whose functions the state may not interfere.

to recover compensation from the T.V.A. under the Alabama Workmen's Compensation law.¹⁶ The Circuit Court of Appeals of the United States ruled that " . . . The great functions of the Authority are governmental in nature and might have been performed directly by the officers of government." The corporation, "except as Congress may otherwise consent, is free from state regulation and control."¹⁷ The Court held therefore that the Authority as a governmental agency was not subject to suit except insofar as Congress had consented thereto. It based the ruling on the T.V.A. act itself, the provisions of which state that it "may sue and be sued in its corporate name," which section is preceded by the words 'Except as otherwise specifically provided in this Act.'¹⁸ The act also provides that the benefits of the United States Employees Compensation Act shall extend to persons given employment under the T.V.A. act "in so far as applicable" to such employees. The court recognized that the words "shall extend to" were not strong enough to give an exclusive remedy, but it considered that the phrase must be so construed when coupled with the words "except as otherwise specifically provided."

We entertain no doubt that Congress can limit the remedy of injured employees of its instrumentality to this compensation. We have but little doubt that it so intended. The inconvenience, uncertainty, and consequent litigation that would at once arise if the laws of each state in which the employee might work should apply must have been foreseen. The incongruity of having these states regulate not only compensation for injury, but hours of labor, safety appliances, and such things on government work is apparent.¹⁹

The decision was therefore in favor of the Authority. The state law was held inapplicable to such employees in the absence

16 *Posey v. T. V. A.*, 93 F. (2) 726 (1937).

17 *Ibid.*, at p. 727.

18 *Ibid.*, at p. 727.

19 *Ibid.*, at p. 728.

of Congressional assent either express²⁰ or implied. The Court obviously gave the strongest interpretation possible to the language of the act in order to negate the state law.

Closely related in their nature are other state labor laws which provide that employers must pay wages promptly, and laws which provide that employers may not retain any portion of the employee's wages either as security or in payment of a debt. The Home Owners' Loan Corporation found itself at once concerned with these laws. The concrete question was: could such state laws prevent the corporation from withholding salaries and fees of its employees and workers to satisfy delinquencies on their loan accounts to the Home Owners' Loan Corporation? Members of the legal staff in a memorandum advised the corporation that it need not obey these laws because of the opinion that state laws can have no application to the management of the internal affairs of a corporate instrumentality engaged solely in the performance of governmental functions.²⁰ This conclusion was reached on the basis of constitutional theory and of precedents in analogous cases. The first precedent relied on was that of *Ohio v. Thomas*, in which the governor of a national home for disabled volunteer soldiers, created by Congress under its war powers, was held immune to prosecution for serving oleomargarine in violation of a state statute.²¹ Another case cited was that of *Easton v. Iowa* in which the court held that a state statute prohibiting the acceptance of deposits by a bank when insolvent could not apply to a national bank.²² The memorandum also cited the case of *First National Bank of San Jose v. State of California et al.*, which held that a state statute providing that unclaimed bank deposits should escheat to the state after twenty years could not constitutionally be applied to a deposit in a national bank.²³ The

20 (*Office Memo.*) Home Owners' Loan Corporation, Applicability of state exemption statutes to withholding of salaries of corporation's employees, Nov. 2, 1936 (Mimeo.).

21 173 U. S. 276 (1899).

22 188 U. S. 220 (1903).

23 262 U. S. 366 (1923).

position taken by Home Owners' Loan Corporation with regard to interference with its employee relationship has not been challenged in the courts.

Another valid exercise of the police power consists in the regulation of foreign corporations. To protect citizens in their dealings with corporations organized under other laws, many states make special requirements of corporations who wish to come in from another state to do business. The problem comes within the scope of this study when states attempt to regulate as foreign corporations national government corporations organized elsewhere. An earlier chapter showed that the courts and attorneys general usually consider such corporations exempt from paying special taxes exacted from other corporations who wish to qualify for domestic business. In matters of regulation there exists a greater diversity of opinion. The controversy has been settled however for the most part at the attorney general level. In New Hampshire the attorney general considered that the Electric Home and Farm Authority was a foreign corporation and therefore ought to comply with state registration statutes.²⁴ The opinion was based on the theory that while it was true that the corporation had been reorganized in the District of Columbia, it was not, however, created by a general act of Congress and therefore the attorney general considered the corporation a foreign one in any state or territory other than the one in which it was created. The fact that all the stock was held for the benefit of the United States was disregarded. The Regional Agricultural Credit Corporation, according to the attorney general of South Dakota, was a "national corporation which must be considered as a domestic corporation in any state or territory in which it may do business."²⁵ In reaching the judgment that the Regional Agricultural Credit Corporation was exempt from complying as a foreign corporation with the state requirements, the attorney general of the state adopted the point of view suggested by

²⁴ Op. At. Gen., N. H. (Sept. 24, 1935), p. 74.

²⁵ Op. At. Gen., S. D. (Oct. 12, 1932), p. 143.

general counsel for the R.F.C. who was then in the process of organizing Regional Agricultural Credit Corporations in several states. In the state of Wisconsin the sale of securities or federal savings and loan associations was permitted without previous registration under the Wisconsin Securities Act. The attorney general of this state followed the line of reasoning suggested by the associate general counsel for the Federal Home Loan Bank Board, namely: that since the federal act under which these associations were organized provided that they might be made fiscal agents of the federal government, they were to be considered federal instrumentalities exempt from the Wisconsin law.²⁶ The only case on this issue which seems to have reached the courts is that of *Leggett v. Federal Land Bank of Columbia, S. C.*, tried in the North Carolina courts.²⁷ The case involved an attempt to serve the federal land bank with a summons by leaving it with the secretary of state. This method of service is used in North Carolina when dealing with a foreign corporation. The Federal Land Bank put in a special appearance and moved that the action be dismissed on the ground that the court had no jurisdiction since the bank had never been properly served. The bank contended that since it was organized under a valid act of Congress, it derived all its rights from that act. It maintained also that it was not a foreign corporation having property or doing business in this state under a license from the state either expressed or implied. The court agreed that the bank was not a foreign corporation and thus dismissed the action as having been improperly begun. If the North Carolina court had ruled to the contrary it is doubtful whether an appeal would have been sustained in view of the following language of the Supreme Court of the United States in the *Priddy* case:

The ruling of the state Supreme Court, that petitioner is a foreign corporation within the meaning of the Arkansas attachment statute,

²⁶ Op. At. Gen., Wis. (May 31, 1935), p. 376.

²⁷ 167 S. E. 557 (1933) (N. C.).

and that the attachment was authorized by local law, presents only a state question, which is not open for review here.²⁸

It would seem then that the Supreme Court is disposed to permit the separate states to decide the status of a government corporation.

One of the most interesting conflicts between the state and federal power occurred when the Banking Commission of Wisconsin attempted to enjoin a state building and loan association from converting itself into a federal one under the provisions of the Home Owners' Loan Act.²⁹ Section 5 of the Act permitted a state building and loan association, which is a member of the Federal Home Loan Bank, to convert itself into a federal savings and loan association upon the vote of a bare majority of its members and without the consent of the state which had created it.³⁰ The case finally reached the Supreme Court of the United States.³¹ Mr. Cardozo, speaking for the Court, ruled that the Home Owners' Loan Act was an unconstitutional encroachment upon the reserved powers of the states to the extent that it permitted the conversion of state associations into federal ones, in contravention of the laws of the place of their creation.

The destruction of associations established by a state is not an exercise of power reasonably necessary for the maintenance by the

28 295 U. S. 229, 231 (1935). Case discussed *infra*.

29 State *ex rel. Cleary et al. v. Hopkins Street Building and Loan Association et al.*, 257 N. W. 684 (1934) (Wis.). For further discussion of the same problem see: Op. At. Gen., Mass. (March 27, 1935). This opinion held that a cooperative bank has no right to convert itself into a federal savings and loan association without the express consent of the legislature; Op. At. Gen., Conn., vol. 1933-35, pp. 346-348 (Jan. 8, 1935). This opinion held that building and loan associations cannot convert into federal savings and loan associations without legislative authority.

30 48 Stat. 134; 12 U. S. C. A. 1464 (June 13, 1933).

31 Hopkins Federal Savings and Loan Assn. *et al. v. Cleary et al.*, 296 U. S. 315 (1935). Three cases were joined for hearing before Supreme Court. The other two cases were suits by two other such associations against the commission to restrain it from interfering with similar conversions by state associations.

central government of other associations created by itself in furtherance of kindred ends.³²

We are not concerned at this time with the applicable rule in situations where the central government is at liberty (as it is under the commerce clause when such a purpose is disclosed) to exercise a power that is exclusive as well as paramount. . . . That is not the situation here. No one would say with reference to the business conducted by these petitioners that Congress could prohibit the formation or continuance of such associations by the states, whatever may be its power to charter them itself.³³

Curiously enough, the Court apparently held that a statute which infringed on an area of state activity was unconstitutional merely because of absence of proof that it had utilized the form least destructive to state control.³⁴ This case was also remarkable in that the Court refused to find a possible justification for the statute under one of the specified powers of Congress. It might well have considered that the extension of credit to associations without the interference of state restrictions was a valid exercise of the currency power. This decision was made at the climax of the Court's resistance to the increased activity of the central government and reflects that attitude. Actually it gave the tenth amendment a positive rather than merely a negative meaning.

The second group of problems which will be considered in this chapter deals with the relatively less significant issues involved in attempting to subject the government corporation to the procedural law of the states. Such questions are concerned with the right to sue, the state's right to attach, to question in third party supplementary proceedings, and to garnish the funds of a government corporation.

One of the strongest cases upholding the legal rights of a state as against a federal instrumentality was that of Federal

³² *Ibid.*, at p. 338.

³³ *Ibid.*, at p. 338.

³⁴ See Note, 36 *Columbia Law Review* 671-673 (1936).

Land Bank of St. Louis *v.* Priddy.³⁵ This case came before the Supreme Court of the United States on a writ of certiorari to the Arkansas Supreme Court. It arose because a real estate broker who wished to sue the Federal Land Bank of St. Louis began his action, pursuant to state law, by attaching the real estate of the bank as that of a foreign corporation. The bank appeared specially, to deny that it was a foreign corporation subject to attachment under the Arkansas statutes. It also affirmed that it was a federal instrumentality, immune from process of attachment under the statutes of the United States. Mr. Justice Stone, speaking for a unanimous court, refused to consider the first contention and declared in addition that

The ruling of the state Supreme Court, that petitioner is a foreign corporation within the meaning of the Arkansas attachment statute, and that the attachment was authorized by local law, presents only a state question, which is not open for review here.³⁶

This language by the Court may be significant in connection with problems discussed elsewhere in this study.³⁷ As to the second contention, the Court agreed that the bank was a federal instrumentality "engaged in the performance of an important governmental function."³⁸ It held further that Congress had full power to determine the extent to which such an instrumentality may be subject to state law, to suit and to judicial process. Mr. Justice Stone, in ascertaining Congressional intent, pointed to sec. 4 of the Federal Farm Loan Act which provides that federal land banks "shall have power . . . to sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons."³⁹ The crux of the case, then, was really the question whether liability to suit carried with it, by implication, the judicial process of attach-

³⁵ 295 U. S. 229 (1935).

³⁶ *Ibid.*, at p. 231.

³⁷ *Supra*, pp. 53-57.

³⁸ 295 U. S. 229, 231 (1935).

³⁹ 39 Stat. 363; 12 U. S. C. A. 676 (July 17, 1916).

ment. The Court thought it did. It reasoned by analogy that the joint stock land banks provisions of the act under which federal land banks had been organized were applicable to the joint stock land banks unless the law had specified otherwise. Joint stock land banks were to a large extent privately owned; therefore the Court presumed in the absence of any expression to the contrary, that Congress had meant to permit a writ of attachment to be issued against them. Without this protection creditors would have as their only recourse the appointment of a receiver after favorable action of the Farm Credit Administration. The Court then said

It is of some significance, also, that Congress thought it necessary, by the terms of sec. 26,⁴⁰ to exempt federal land banks from taxation, a provision which is not made applicable to joint stock land banks. . . This affords additional evidence of the congressional judgment that attachment and execution, as distinguished from liability to taxation, are not obstacles to the performance of the governmental functions committed to federal land banks.”⁴¹

From this the Court argued that, when Congress wished to distinguish between these two categories of banks in respect to their exemption from taxation, it did so; that since Congress did not distinguish between them in regard to a writ of attachment it meant to treat them alike in respect to such regulation and that the law must have wished to subject joint stock land banks to such regulation because of their private character. In this case the Court was obviously willing to search at some length for “consent” to this type of state control although this “consent” is based on a series of assumptions as to the intent of Congress. On the other hand one should not attach too great importance to this decision. For it was based ultimately on the theory that Congress had given its consent to such regulation. Under this decision it would still be possible for Congress, if it so desired, to finance a corporation and specifically to provide for its immunity from any kind of state regulation.

40 39 Stat. 380; 12 U. S. C. A. 931 (July 17, 1916).

41 295 U. S. 229, 234 (1935).

A New York State court was quick to seize upon the doctrine involved in the Priddy case and so to extend it that the Home Owners' Loan Corporation was held bound to answer in third party proceedings supplementary to judgment. The court maintained that since there was no express exemption from this kind of action in the statute setting up the Home Owners' Loan Corporation, and moreover since the corporation was given the power to sue, Congressional consent for this kind of state control was implied.⁴²

Another important problem deals with the question whether government corporations are subject to state garnishment proceedings. A series of state cases all dealing with the Home Owners' Loan Corporation resulted in conflicting opinions.⁴³ The Supreme Court of Tennessee ruled in the negative.⁴⁴ The Supreme Courts of Ohio and Nebraska ruled affirmatively.⁴⁵ The United States Supreme Court refused to issue a writ of certiorari in the Nebraska case.⁴⁶ These cases were all decided on different grounds. Tennessee, considering that the decision ought to depend on Congressional intent, found no legislative consent to such proceedings either express or implied in the act setting up the Home Owners' Loan Corporation. It distinguished this case from that of Federal Land Bank of St. Louis

42 *H & P Paint Supply Co. Inc. v. Ortloff*, 289 N. Y. Supp. 367 (1936). This case was not further appealed.

43 The T. V. A. reported through its General Counsel that it had been successful in defeating all garnishment proceedings when begun in state courts. The Authority had taken the position that this was rather a question of successful administration than one of law. Accordingly, whenever claims against employees are brought to the attention of the Authority, the matter is referred to the personnel division for adjustment. Letter dated April 22, 1937, from Mr. J. L. Fly, General Counsel, T. V. A., See Note: 15 *Chickent Law Review* 237-240 (1937).

44 *Home Owners' Loan Corporation v. Hardie and Caudle*, 100 S. W. (2) 238 (1936) (Tenn.), see also Note: 5 *George Washington Law Review* 264-7 (1937).

45 *Gill v. Reese et al.*, 4 N. E. (2) 273 (1936) (Ohio); *Central Market, Inc. v. King* (H. O. L. C. Garnishee) 272 N. W. 244 (1937) (Neb.).

46 302 U. S. 687 (1937) (Mem.).

v. Priddy,⁴⁷ for the reason that the Federal Land Bank Act was worded broadly "to sue and be sued . . . as fully as *natural persons*,"⁴⁸ while the Home Owners' Loan Act merely provided that the corporation "*shall have authority to sue and be sued.*"⁴⁹ The court held further that since the salaries of employees are paid by warrant on the Secretary of the Treasury any attempt at garnishment would be a direct infringement on the power of a federal instrumentality. The Ohio courts reached an opposite conclusion. They argued that while the Home Owners' Loan Corporation had the characteristics of a public enterprise "yet the acts have been authorized by Congress itself to be performed by and through the arm of a private corporation, rather than by means of the exercise of power by a government officer, or by the legislative body itself."⁵⁰ The court held that as a private corporation it came within the Ohio garnishment statute. This case, then, was decided solely on the basis of the form in which the activity was undertaken. In addition the case cited with approval some of the decisions holding the war-time corporations subject to garnishment, but it discreetly omitted the latest of these cases in which one of the same corporations was considered exempt.⁵¹ The same conclusion was

47 295 U. S. 229 (1935) *supra* at p. 108.

48 39 Stat. 363; 12 U. S. C. A. 676 (July 17, 1916).

49 48 Stat. 129; 12 U. S. C. A. 1463 (a) I. (June 13, 1933).

50 *Gill v. Reese et al.*, 4 N. E. (2) 273, 274 (1936) (Ohio).

51 *McCarthy v. United States Shipping Board Merchant Fleet Corp.*, 53 F. (2) 923 (1931) Cert. denied, 285 U. S. 547 (1932). Holding that the Merchant Fleet Corporation may be permitted by law to sue or be sued and yet not be subject to attachment and garnishment.

Per Contra: Commonwealth Finance Corporation *v. Landis* (Emergency Fleet Corporation, Garnishee) 261 Fed. 440, 441 (1919) in which the court held: "In view of the legislation creating the United States Shipping Board Emergency Fleet Corporation, and of the fact that Congress saw fit to act through a private corporation, *held* that, although the United States owns the stock of the corporation, it is not exempt from service of process, and may be garnished and sued, even though it may appear at trial that the matter is one relating to which the corporation is clothed with the attributes of sovereignty, and not subject to suit." See also: *Haines et al. v. Lone Star Shipbuilding Co.* (United States Shipping Board Emergency Fleet Corporation, Garnishee) 110 A. 788 (1920) (Pa.).

reached in the Nebraska as in the Ohio case, but the former decision was based on the supposition that the Home Owners' Loan Corporation was engaged in a commercial activity. It ruled against the Home Owners' Loan Corporation although it was aware of the federal decision (ignored by the Ohio court) holding the United States Shipping Board Emergency Merchant Fleet Corporation exempt from garnishment proceedings. It cited with approval cases like *Salas v. United States*⁵² which contained in the court's written opinion language more closely consonant with the Nebraska decision, such as "When the United States enters into commercial business it abandons its sovereign capacity and is to be treated like any other corporation."⁵³ The refusal of the Supreme Court to issue a writ of certiorari in the Nebraska case has no significance since the writ was refused only on the technical ground that no final judgment had been entered in the state case. As was indicated, the cases involving the war-time corporations show as much disagreement as do these recent state decisions with regard to garnishment.⁵⁴ The Supreme Court of the United States refused to review the garnishment cases involving the war-time corporations when given the opportunity to do so.⁵⁵ Thus the law on this subject remains in a state of complete confusion.⁵⁶

⁵² 234 Fed. 842 (1916).

⁵³ *Ibid.*, at p. 844.

⁵⁴ *Supra*, footnote 51.

⁵⁵ *McCarthy v. United States Shipping Board Merchant Fleet Corp.*, 53 F. (2) 923 (1931) Cert. denied 285 U. S. 547 (1932).

⁵⁶ Nor is the problem limited to government agencies using the corporate form. *Graves Bros. Inc. v. Lasley et al.*, 78 S. W. (2) 810 (1935) (Ark.) which held that a check payable to a tenant by the Secretary of Agriculture pursuant to a crop control agreement under which tenant destroyed growing cotton on which landlord had lien for rent and which check was in the hands of the Secretary's local agents was subject to an equitable action of garnishment, in an action by the landlord to enforce his lien for rent.

Per Contra: *Works and Rhea v. Shaw (Mims, Garnishee)* 156 So. 81 (1934) (La.) ruled that a check to a farmer for plowing up the cotton crop pursuant to agreement with the federal government while still in the hands of an agent of the United States Secretary of Agriculture, was in the possession of the United States so as not to be subject to garnishment.

As has been repeatedly indicated, government corporations resist most state regulation. There are two notable exceptions to this attitude. The first is found when the exercise of state law would result in the increase of power at the disposal of a government corporation. An interesting example is the case of *R.F.C. v. Central Republic Trust Co. et al.*⁵⁷ The R.F.C. had proceeded against the stockholders of this state bank, to which the corporation had loaned money. The action was instituted under the state law which provided for enforcement of stockholders' liability in favor of creditors of state banks. The defendants denied the power of the corporation to proceed under state law. They invoked the rule that since the plaintiff was created by federal law, therefore this law fixed its rights and obligations which the defendants claimed could not be enlarged or diminished in any way by state law. The court considered that the rule did not have the broad application which defendants attempted to give it.

In determining whether or not Congress has occupied a given field in such a way as to exclude the operation of state laws, the entire scheme of the federal statute must be considered. The intent to supersede the operation of the state statutes in such a case is not to be implied unless the repugnance is direct and positive, so that the two acts cannot be reconciled or consistently stand together. . . . It would be an unwarranted application of the rule to take away from the Reconstruction Finance Corporation a benefit under its contract conferred by state law in the absence of a clear expression by Congress of its intent that the state law should not apply."⁵⁸

The court therefore found for the plaintiff and thus enlarged the powers of an instrumentality of the federal government by adding the assistance of a state law.

Another example of a willingness to be subjected to state law can be seen in the following provisions of the Bankhead Act:

The acquisition by the United States of any real property acquired before or after June 29, 1936 for any resettlement

project or any rural rehabilitation project for resettlement purposes constructed before or after June 29, 1936, with funds allotted or transferred to the Resettlement Administration pursuant to the Emergency Relief Appropriation Act of 1935, or any other law, shall not be held to deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or to impair the civil rights under the local law of the tenants or inhabitants on such property; and insofar as any such jurisdiction has been taken away from any such State or subdivision, or any such rights have been impaired, jurisdiction over any such property is hereby ceded back to such State or subdivision.⁵⁹

This section was put into the law at the request of the legal officers of Resettlement and other projects.⁶⁰ The notion that the central government had exclusive jurisdiction over these areas had already engendered difficulties which interfered considerably with their work. Doubts had already been expressed as to the rights of such tenants to vote, to send their children to local schools, and to exercise other civil rights under the local laws.

The problem of exclusive jurisdiction arises from Art. I, Sec. 8, cl. 17 of the United States Constitution:

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of

⁵⁹ 49 Stat. 2035, ch. 868, sec. 1; 40 U. S. C. A. 431 (June 29, 1936).

⁶⁰ House Report No. 3025, accompanying Pub. No. 845, June 17, 1936 which states in part:

Legal representatives of various political subdivisions interested in such projects have contended that, under the constitution of the United States and the session laws of various states, the United States acquires exclusive jurisdiction over the property embraced in such projects. Whether or not such contention is sound, it is thought advisable to remove doubts and hesitancy arising because of the such contentions by waiving exclusive jurisdiction of the United States in so far as it may arise by reason of ownership by the United States of the sites of such projects. Otherwise, doubts as to the rights of tenants to vote, to send their children to local schools, and to exercise other civil rights under the local laws keep prospective tenants from taking advantage of such projects. See also: (*G. C. Memo 144*) Resettlement Administration, pp. 74-78, July 31, 1936 (Mimeo.).

particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and *other needful buildings*;

Early in the constitutional history of the United States the term "other needful buildings" was given a very broad interpretation. It might therefore be possible for the United States to acquire exclusive jurisdiction over the territory of Subsistence Homesteads Corporations as "other needful buildings."⁶¹ Persons who live in areas over which the United States has exclusive jurisdiction are considered to be territorially separate from the state in whose boundaries the area concerned is located. They are considered to be dwelling on a "Federal Island."⁶² Therefore such tenancy gives them no rights as residents of the state. Thus they cannot claim the usual rights of residence, such as the right to vote,⁶³ the right to use the public schools,⁶⁴ and the ability to sue in the state courts⁶⁵ for divorce.⁶⁶

Counsel for the corporations involved urged the insertion of a provision in the Bankhead Act in order to avoid these disabili-

61 37 Op. At. Gen. U. S. 288 (Oct. 4, 1933); 38 Op. At. Gen. U. S. (July 18, 1934); 38 Op. At. Gen. U. S. 31 (Aug. 23, 1934).

62 *Surplus Trading Co. v. Cook*, 281 U. S. 647 (1930); *Crook, Horner and Co. v. Old Point Comfort Hotel Co.*, 54 Fed. 604 (1893); *United States v. Cordy*, 58 F. (2) 1013 (1932); see also: (*G. C. Memo 144*) Resettlement Administration, p. 70, July 31, 1936 (Mimeo.).

63 *In re Town of Highlands*, 22 N. Y. Supp. 137 (1892); *McMahon v. Polk*, 73 N. W. 77 (1897) (S. D.); *Sinks v. Reese*, 19 Ohio St. 306 (1869); *State ex rel. Lyle et al. v. Willett et al.*, 97 S. W. 299 (1906) (Tenn.).

64 *Newcomb et al. v. Inhabitants of Rockport et al.*, 66 N. E. 587 (1903) (Mass.); *School District No. 20 of Pennington County v. Steele*, 195 N. W. 448 (1923) (S. D.). But see: *Rockwell v. Independent School District*, 202 N. W. 478 (1925) (S. D.).

65 *Lowe v. Lowe*, 133 A. 729 (1926) (Md.). But see: *Dicks v. Dicks*, 170 S. E. 245 (1933) (Ga.).

66 A recent Maryland statute indicates a means whereby the states may remove such difficulties as are noted above, assuming the existence of exclusive jurisdiction in the United States. In Maryland Laws 1935, ch. 63, it is

ties for the future and settle any doubts as to the projects already undertaken.⁶⁷ It is significant that this act provided for the return to the states of any jurisdiction which might have been taken away or any rights which might have been impaired.

The problem is more than a theoretical one. This can be seen from the case of *Tagge et al. v. Gulzow et al.* which dealt with one aspect of this problem in conjunction with the Nebraska Rural Rehabilitation Corporation.⁶⁸ This corporation was a farmstead project financed with federal funds. Ten plaintiffs, each having children of school age, brought suit for a permanent injunction restraining three defendants, officers of Common School District Number 28, from imposing tuition payments. The plaintiffs all resided on an eighty-acre tract of land purchased with funds of the federal government. The defendants answered:

'That said land is owned by the United States of America, holding title in the name of the Nebraska Rural Rehabilitation Corporation of the county of Lancaster, in the state of Nebraska, a Delaware corporation; that said land was purchased by the United States for the purpose of erecting thereon needful buildings in carrying out a governmental project authorized by act of Congress; that under the United States Constitution and under the laws of the state of Nebraska the United States of America has exclusive jurisdiction over said tract of land; that the plaintiffs are all residents on said tract of land . . . and their children are not entitled to attend the public school of said district.'⁶⁹

declared that all persons residing on property within the physical boundaries of the city of Baltimore, but over which the United States exercises jurisdiction by virtue of the United States Constitution and the Maryland consent statute, 'shall be considered as residents of the state and of the county or of the city of Baltimore, as the case may be, in which the land is situated for the purpose of jurisdiction in the courts of equity of this state in all applications for the adoption of infants.' (*G. C. Memo 144*) Resettlement Administration, p. 71.

⁶⁷ *Supra*, p. 113.

⁶⁸ 271 N. W. 803 (1937) (Neb.).

⁶⁹ 271 N. W. 803, 804 (1937) (Neb.).

The court found that this project was being operated jointly by the agricultural department of Nebraska and the Department of Agriculture in Washington. This cooperation militated against any argument of exclusive jurisdiction on the part of the United States Government. The court therefore ruled that these children were residents entitled to go to school without the payment of any tuition. No matter what the solution of such a case, the mere existence of such pending litigation would discourage persons from joining and buying property in such an enterprise.⁷⁰

One seeks in vain for the answer to the question "May a state regulate a national government corporation?" from the judiciary. The judicial answer is too varied and contradictory to be useful. The only possible thread of consistency in the pattern of cases is the practice of the federal courts not to rule contrary to the clearly expressed intent of Congress. It might be added that legal language has been strained on occasion in order to "find" such consent. This arouses the suspicion that the federal courts are trying to preserve the theory of absolute federal immunity and yet at the same time arrive at a reasonable solution. The federal courts in discussing the New Deal corporations have, on the whole, attached no significance to the use of the corporate form. The state courts follow no set patterns. Some are concerned with Congressional intent. Others find Congressional consent to regulation from the very use of the corporate form. Still others try without success to distinguish between proprietary and governmental activities of the United States. Thus the decisions vary from jurisdiction to jurisdiction and from case to case. The courts are not likely to give a solution. Nor can the majority of the legal officers of the corporations be counted on to do more than assert their strict legal rights and resist all state regulation. This is all by way of saying that the solution will more probably be found in clearly thought out Congressional legislation which will provide for a reasonable division of power and responsibility.

⁷⁰ See also: *Rolland et al. v. School District No. 4 of Dakota County et al.*, 271 N. W. 805 (1937) (Neb.).

PART III

THE STATE FACILITATES THE ACTIVITIES OF THE
GOVERNMENT CORPORATION

CHAPTER V

THE STATE LEGISLATES IN FAVOR OF THE GOVERNMENT CORPORATION

IF the preceding chapters have drawn the one-sided picture of an embattled federalism in which the states are constantly fighting to protect their right to tax and regulate the corporate offshoots of the federal government, the following chapters will furnish the proper corrective. They will portray the states in attitudes of amity and cooperation. The present chapter will describe how the legislatures of the forty-eight states have passed hundreds of laws in the years 1933-1937 designed to facilitate the activities of government corporations within the states and to make the states eligible to be their beneficiaries.

These state laws follow several patterns. A large percentage of them are of the permissive or enabling variety. Illustrative of this type are laws which permit the borrowing of money from the R.F.C. or other federal agencies by water control districts,¹ school districts,² towns and counties,³ county courts,⁴ state governors,⁵ and others.⁶ Other statutes allow state build-

1 Tex. Laws 1934 (2nd Session), ch. 4; Tex. Laws 1935 (Sept. to Nov.), ch. 420, sec. 1-n, ch. 410, ch. 338; Ia. Laws 1935, ch. 91; Cal. Laws 1933, ch. 609; Ore. Laws 1935 (Special Session), ch. 37.

2 Tex. Laws 1933, ch. 90, ch. 63.

3 Ind. Laws 1933, ch. 187; Cal. Laws 1933, ch. 331; Wyo. Laws 1935, ch. 75, sec. 2; W. Va. Laws 1933 (First Extra), ch. 64, ch. 80; Pa. Laws 1933, act 20, sec. 1; N. M. Laws 1933, ch. 140; Ala. Laws 1932 (Special Session), act 11; Minn. Laws 1933, ch. 301; Me. Laws 1933, ch. 243; Mo. Laws 1933, p. 363; Ia. Laws 1933, ch. 111.

4 W. Va. Laws 1933 (First Extra), ch. 52; W. Va. Laws 1932 (Extraordinary Session), ch. 13.

5 Ark. Laws 1933, act 108; N. Y. Laws 1933, ch. 8; Cal. Laws 1933, ch. 602; Ore. Laws 1933, ch. 297, 277, 399, 431; Ark. Laws 1933, act 108.

6 Okla. Laws 1933, ch. 61, sec. 1. This law authorizes the state board of public affairs to get an R. F. C. loan to make a state lake; Ariz. Laws 1933, ch. 14. This law authorizes the state highway commission to borrow money

ing and loan associations to invest in bonds of the Home Owners' Loan Corporation,⁷ to subscribe to stock and become members of the Federal Home Loan Bank,⁸ and to convert them-

from the R. F. C. or other agency for a toll or other highway bridge across the Colorado River; Del. Laws 1933, ch. 61, p. 306. This law authorizes limited dividend corporations to borrow money from the R. F. C. for housing purposes; Pa. Laws 1933 (Special Session), act 12, sec. 1. This law authorizes the department of highways to borrow money from the R. F. C. for the construction of bridges.

7 Ky. Laws 1934, ch. 12; Ill. Laws 1933-34 (Special Session), p. 174; Me. Laws 1933 (Special Session), ch. 272, 273; La. Laws 1934, act 5; Ariz. Laws 1937, ch. 23; N. J. Laws 1933 (Special Session), ch. 1; Ore. Laws 1933 (Special Second Session), ch. 71; Mo. Laws 1933-34 (Special Session), S. B. 53; Mich. Laws 1933-34 (Special Session), act 14, sec. 8a; Mich. Laws 1933, act 240; Kan. Laws 1933 (Special Session), ch. 49; see also the following laws designed to permit state banks to invest in bonds of the Home Owners' Loan Corporation or to exchange real estate notes or other securities for these bonds: Ky. Laws 1934, ch. 14; Me. Laws 1933-34 (Special Session), ch. 295; N. J. Laws 1933 (Special Session), ch. 1; Minn. Laws 1934 (Special Session), ch. 50; Minn. Laws 1933, ch. 101, sec. 1, 2; Mich. Laws 1933-34 (Special Session), act 23; N. C. Laws 1937, ch. 186; Vt. Laws 1933 (Special Session), act 6; Vt. Laws 1933 (Regular Session), ch. 272. See also the following laws designed to permit insurance companies to invest in bonds of Home Owners' Loan Corporation: Wash. Laws 1933 (Special Session), ch. 36, sec. 1; N. Y. Laws 1935, ch. 412, sec. 1, 2; Minn. Laws 1933-34 (Special Session), ch. 71, sec. 1, 2; Ia. Laws 1933-34 (Special Session), ch. 123.

8 Del. Laws 1933, ch. 19; Del. Laws 1932-33, ch. 2; Ala. Laws 1932 (Extra Session), act 90; N. H. Laws 1933, ch. 26, sec. 2; Wyo. Laws 1933, ch. 108; Neb. Laws 1933, ch. 25; Tex. Laws 1932-33, art. 881-a37; Nev. Laws 1935, ch. 59; R. I. Laws 1933-34, ch. 2027; Ia. Laws 1933, ch. 164; N. Y. Laws 1933, ch. 54; Ind. Laws 1932 (Special Session), ch. 39; Idaho Laws 1933, ch. 63; Okla. Laws 1935, ch. 46; Ore. Laws 1933, ch. 328, sec. 1; S. D. Laws 1933, ch. 108; Kan. Laws 1933, ch. 143; S. C. Laws 1934, act 914; Vt. Laws 1935, act 178; Ariz. Laws 1937, ch. 23; Mo. Laws 1933, p. 180; Conn. Laws 1933, sec. 1524 c; Md. Laws 1933, ch. 26.

See also the following laws designed to permit insurance companies to purchase stock and become members of the Federal Home Loan Bank: Ind. Laws 1933, ch. 232, sec. 1; N. J. Laws 1933, ch. 105; N. M. Laws 1933, ch. 87; see also the following laws designed to permit savings banks to purchase stock and become members of the Federal Home Loan Bank: N. J. Laws 1933, ch. 104; R. I. Laws 1933-34, ch. 2020; Mass. Laws 1933, ch. 46, sec. 1; Mass. Laws 1933, ch. 144, sec. 56; Ariz. Laws 1934 (Revised Code Supp.), p. 74, sec. 268a; Conn. Laws 1933, sec. 1523c; Me. Laws 1933, ch. 95; N. Y. Laws 1933, ch. 739; N. M. Laws 1933, ch. 87; N. C. Laws 1937, ch. 186; Cal. Laws 1933, ch. 460, sec. 61 (5g).

selves under certain circumstances into "federal savings and loan associations."⁹ Under other conditions the associations are even permitted to reconvert themselves into state building and loan associations.¹⁰ Very similar in intent are those state laws which authorize localities to accept Home Owners' Loan Corporation bonds in payment of special assessments,¹¹ and permit state rehabilitation corporations to convey their assets to the Resettlement Administration of the federal government.¹² Under the same heading of permissive legislation one can also mention laws to authorize the commissioner of highways of Tennessee to accept a roadway from the Tennessee Valley Authority,¹³ laws which permit localities to contract for electricity with the Tennessee Valley Authority,¹⁴ and a law to extend the powers of cooperatives so as to enable such associations to assist in

9 Ky. Laws 1934, ch. 11; Tex. Laws 1935 (Jan. to May), ch. 68; N. D. Laws 1935, ch. 96; Wash. Laws 1933 (Extra Session), p. 44, sec. 1-5; Nev. Laws 1933, ch. 60; N. C. Laws 1935, ch. 104; Neb. Laws 1935, ch. 15; Cal. Laws 1935, ch. 163, sec. 12.11; N. J. Laws 1934, ch. 186; Mont. Laws 1935, ch. 174; Miss. Laws 1936, ch. 173; Ore. Laws 1933 (Second Special Session), ch. 73; R. I. Laws 1933-34, ch. 2095; Utah Laws 1935, ch. 14; S. D. Laws 1935, ch. 65; Minn. Laws 1933 (Special Session), ch. 77, sec. 1, 2; Mich. Laws 1935, act 116; Ariz. Laws 1935, ch. 95; Ala. Laws 1935, act. 166; Ark. Laws 1935, act 128; Ga. Laws 1935, act 129; Fla. Laws 1935, ch. 16843, p. 175; Col. Laws 1935, ch. 83, sec. 1, 2; Kan. Laws 1935, ch. 134; Ia. Laws 1933-34 (Special Session), ch. 124, sec. 1; Md. Laws 1935, ch. 232, p. 475; Ohio Laws 1933-34 (Third Special Session), p. 394; Ill. Laws 1933-34 (Special Session), p. 174; Mass. Laws 1935, ch. 215; S. C. Laws 1934, act 912; Ark. Laws 1934 (3rd Special Session), act 128; Idaho Laws 1937, ch. 117; N. Y. Laws 1937, ch. 825; Wyo. Laws 1935, ch. 60; Conn. Laws 1935, sec. 1506 c.

10 Ill. Laws 1935, p. 570; Ia. Laws 1937, ch. 220; N. Y. Laws 1937, ch. 826, p. 1813; N. C. Laws 1937, ch. 12; Miss. Laws 1936, ch. 173; Kan. Laws 1935, ch. 134; Ark. Laws 1934 (3rd Special Session), act 128.

11 Ore. Laws 1933 (Second Special Session), ch. 15; Miss. Laws 1934, ch. 216; Mich. Laws 1935, act 186; Mich. Laws 1933-34 (Special Session), act 9.

12 S. C. Laws 1936, act 858; N. D. Laws 1937, p. 548.

13 Tenn. Laws 1937, ch. 296.

14 Tenn. Laws 1935, ch. 37, 32; Tenn. Laws 1935 (Special Session), ch. 3, sec. 1, 2, 13, 14.

the extension of the Tennessee Valley Authority.¹⁵ Other permissive laws provide for the joint use of facilities and information by federal corporations and state agencies. An example is a statute which provides that the reports of state examiners on the financial condition of state banks are confidential with the exception that the state examiner may furnish " . . . to the Reconstruction Finance Corporation and the Federal Deposit Insurance Corporation copies of all reports and information pertaining to the condition of State Banks in which such corporations are interested."¹⁶ Of similar intent are statutes which permit state savings and loan associations to share their offices with federal savings and loan associations.¹⁷

Aside from permissive legislation, there are state laws which exempt federal agencies from taxation and regulation. These laws facilitate the work of the government corporations operating within the states. There are, for example, statutes which exempt federal corporations from corporate income taxes,¹⁸ privilege taxes required of foreign corporations,¹⁹ full recordation requirements and fees,²⁰ and property taxes.²¹ Other examples of this same category are statutes which place government corporations beyond the control of state public service commissions,²² stock security commissions,²³ mortgage mora-

¹⁵ Miss. Laws 1934, ch. 289.

¹⁶ Wyo. Laws 1935, ch. 12; S. D. Laws 1935, ch. 55.

¹⁷ Wash. Laws 1933 (Extra Session), p. 46, sec. 6; Ala. Laws 1935, act 166; Ohio Laws 1933-34 (Third Special Session), p. 394; W. Va. Laws 1933 (2nd Extra Session), ch. 33.

¹⁸ N. Y. Laws 1935, ch. 305; S. C. Laws 1934, act 880; Ky. Laws 1936-37 (4th Special Session), ch. 4; Mass. Laws 1934, ch. 362.

¹⁹ N. Y. Laws 1935, ch. 305; Fla. Laws 1935, ch. 16843; Md. Laws 1935, ch. 232.

²⁰ Ind. Laws 1935, ch. 147, sec. 1; Md. Laws 1935, ch. 281, sec. 54 G and 54 H; N. C. Laws 1935, ch. 120, 360, 388; Mich. Laws 1935, act 14; Del. Laws 1935, ch. 217, p. 762-763; N. Y. Laws 1934, ch. 455; S. C. Laws 1935, act 187, 256, 878.

²¹ N. Y. Laws 1935, ch. 305.

²² Ala. Laws 1935, act 1.

²³ Mich. Laws 1935, act 37, sec. 4c.

torium laws,²⁴ state laws which prohibit the securing of deficiency judgments,²⁵ and property execution laws.²⁶

Still another category includes laws which exempt state agencies from specific state requirements when such agencies deal with federal corporations, or when they comply with federal requirements. Some illustrations of this type are statutes which exempt state banks from examination by state authorities provided that within a reasonable prior period an examination has already been conducted by the Federal Deposit Insurance Corporation.²⁷ In many states, also, laws which require state banks to furnish security for the deposit of public funds do not apply to those deposits which are insured under the Federal Deposit Insurance Corporation.²⁸ Of this same variety are laws which provide that all banks and state building and loan associations wishing to borrow from the R.F.C. or other corporations shall be exempt from state requirements as to collateral,²⁹ limitations on the amount of stock which can be issued³⁰ and the necessity for securing the approval of the state banking commissioner.³¹ There are also laws which exempt state groups when selling to the United States "or any corporation, instrumentality or agency . . ." from requirements of par

²⁴ *Supra*, p. 97.

²⁵ S. D. Laws 1935, ch. 150.

²⁶ Wis. Laws 1935, ch. 385.

²⁷ N. D. Laws 1935, ch. 95; Utah Laws 1935, ch. 8; Md. Laws 1935, ch. 514; Idaho Laws 1937, ch. 47.

²⁸ Ky. Laws 1936, ch. 44; Nev. Laws 1935, ch. 151; Okla. Laws 1935, ch. 28; Neb. Laws 1935, ch. 140; Mo. Laws 1935, p. 372; Tenn. Laws 1935 (Special Session), ch. 39; Minn. 1933 (Special Session), ch. 62; Mich. Laws 1935, act 100; Kan. Laws 1935, ch. 76; Idaho Laws 1933, ch. 31; Pa. Laws 1935, act 230, sec. 1; Ohio Laws 1935, p. 409, ch. 18, sec. 1; N. D. Laws 1937, ch. 99; Ariz. Laws 1937, ch. 50; N. J. Laws 1935, ch. 196.

²⁹ Tex. Laws 1932-33 (Third Called Session), ch. 283, sec. 7; Mo. Laws 1935, p. 378, 382.

³⁰ Ia. Laws 1937, ch. 221.

³¹ Tex. Laws 1932 (Third Called Session), p. 314, ch. 18.

value sale of public securities³² and from requirements of public advertising.³³

Some state laws even attempt to amplify the powers of government corporations operating in the states. Some state legislatures have made it mandatory for state authorities to appoint the Federal Deposit Insurance Corporation as receiver of a state bank whose deposits are in any way insured by this corporation.³⁴ In the same way a few of the government corporations are authorized in some instances to exercise the power of eminent domain in the states.³⁵ There is a similar intent in the law which provides that no mortgage may be cancelled in which any agency or instrumentality of the United States has an interest, until the aforementioned agency has been given an opportunity to see that its lien has remained a primary one.³⁶

An analysis of state laws reveals two other groups which have not yet been mentioned. One consists of those statutes which set up or utilize special agencies with the purpose of securing aid from the R.F.C.³⁷ The other embodies a series of resolutions and acts which call upon the Congress of the United States either to liberalize the purposes of the R.F.C.³⁸ or to set up new federal corporations to take care of particular state needs.³⁹

A review of the evidence obtainable both from the texts of state laws themselves and the evidence to be gleaned from other sources may help to answer some of the following questions which are suggested by the strikingly prompt passage of such

32 Tex. Laws 1935 (January to May), ch. 18, ch. 301.

33 Ala. Laws 1935, act 35.

34 Miss. Laws 1934, ch. 146; Mich. Laws 1935, act 150.

35 Ark. Laws 1935, act 177; Col. Laws 1935, ch. 130; Tenn. Laws 1935 (Special Session), ch. 44.

36 La. Laws 1936, act 255.

37 Fla. Laws (Cumulative Index to 1934), sec. 4151; Pa. Laws 1933, act 169; Tex. Laws 1933, p. 900; Ore. Laws 1933, ch. 297, 277, 431; Ark. Laws 1933, act 108; N. Y. Laws 1933, ch. 8; Cal. Laws 1933, ch. 4.

38 Tex. Laws 1933, p. 980, 934; Ore. Laws 1933, p. 932.

39 Tex. Laws 1933 (Session of Sept.-Oct.), p. 335.

a vast array of cooperative legislation. How much influence do government corporations exert on state legislatures? What methods do they pursue to accomplish their ends? To what extent are state laws repetitious? Why were state laws concerned with only a handful of the many government corporations? To what extent is the use of the corporate form for governmental agencies significant in its influence on state law? To what extent are states aware of the form of the agency with which they are dealing?

As a matter of fact the states have had cogent reasons for passing legislation which assigned to state agencies powers which they hitherto did not possess and exempted state and federal agencies from the operation of specific state laws. Such legislation enables them to make necessary improvements by securing federal funds. Since this motivation is so compelling, state cooperation can almost be taken for granted and the question resolves itself into an analysis of the means by which states are made aware of their need for specific laws containing the appropriate provisions. Cooperation between state and national agencies in legal matters results in legislation which benefits both. To gain their objectives the government corporations use various techniques.

The history of the Federal Deposit Insurance Corporation furnishes one example of this collaboration. When the corporation was originally organized its general counsel wrote to the various state attorneys general and state banking departments and posed the following questions in order to ascertain the status of the laws of particular states in the light of the National Banking Act of 1933:⁴⁰

1. Whether the laws of the State authorize or permit State banks, trust companies, or mutual savings banks, organized or doing business under the laws of the State, to purchase Class A stock of the Federal Deposit Insurance Corporation and to assume the obligations incident to the ownership of such stock.

⁴⁰ Letter dated May 16, 1938, from Mr. L. E. Birdzell, General Counsel for the Federal Deposit Insurance Corporation.

2. Whether the laws of the State authorize or permit this Corporation to be appointed Receiver of a State bank, trust company or mutual savings bank, organized or doing business under the laws of the State in the event the bank should be closed on account of inability to meet the demands of its depositors.
3. In the event the law of the State does not permit the appointment of the Corporation as Receiver, how may the Corporation be assured the enjoyment of its right to receive dividends on the same basis as in the case of a closed National bank? Will such recognition in your State: (a) be accorded by State law; (b) be evidenced by the allowance of claims by appropriate State authority; (c) be affected by assignment of claims by depositors; or (d) be accorded by some other method? Recognition in one or more of the forms indicated must be accorded before the amount of the insured deposit liabilities so recognized can be made available in a new bank; hence the importance of knowing in advance which method may be legally sought and the most advantageous procedure for obtaining it.⁴¹

These inquiries were extremely pertinent to the problem. A negative answer on the part of the authorities pointed to the need for additional state legislation. Such legislation would permit a particular state to take advantage of the aid which the Federal Deposit Insurance Corporation was in a position to give. Some answers of the attorneys general and banking authorities confined themselves to information in terms of the existing law, but others went farther and actually invited federal collaboration. For example, the attorney general of West Virginia concluded his letter in reply with the following paragraph:

The legislature of the state will convene in regular session on the second Wednesday in January, 1935, *and if further legislation be necessary or expedient, it can doubtless be obtained at that session.*⁴²

41 Op. At. Gen., W. Va., 1933-34, p. 502; Op. At. Gen., Ala. (April 2, 1934), p. 549; Op. At. Gen., Ill., 1934, p. 113. (These opinions in answering Mr. Birdzell all quote the questions). Op. At. Gen., Pa., p. 226 (Sept. 6, 1934).

42 Op. At. Gen., W. Va., 1933-34, p. 510 (March 30, 1934).

An attorney general from a different* section of the country included in his answer the following:

Under the laws of this state it is our opinion that the Federal Deposit Insurance Corporation may not be appointed receiver of a state bank, trust company, or mutual savings bank.

Before the meeting of our next State Legislature which convenes in January, 1935, we expect to have prepared for submission a bill which will enable the banks of this State to cooperate fully in the Federal Banking Program. In the preparation of such a bill we expect to have the cooperation of the State Examiner, the general receiver, *and we shall be more than pleased to submit the results of our work to your office for suggestions and criticisms.* . .⁴³

The 1935 session of that state legislature passed a statute correcting the previous inadequacies of the state law in the light of the questions asked by the general counsel and in such a manner as to afford complete cooperation under the Banking Act of 1933.⁴⁴

These two letters indicate two different techniques of state-federal collaboration. The first letter implies a procedure by which the federal corporation was asked to suggest definite draft bills which it wished to have the state legislatures pass. The second indicates a procedure by which the federal corporation assumed an advisory position. The Federal Deposit Insurance Corporation used both these techniques. The general counsel for this corporation watches state legislation very closely. His office drafts bills which it then forwards to the states.⁴⁵ The history of the bills is then studied and if they are

43 Op. At. Gen., N. D., p. 116 (March 17, 1934).

44 N. D. Laws 1935, ch. 95.

45 Letter dated May 31, 1938 from State Banking Department of New Mexico said in part:

"The legislation concerning banks was based principally on model bills that were submitted to this department by the Federal Deposit Insurance Corporation."

Letter dated June 13, 1938 from the Department of Law, Colorado said in part:

"The bills submitted by Washington were altered only in minor respects,

defeated the bills are again urged for passage during the next legislative session. Before the opening of a fairly recent state legislative session the following letter from the Federal Deposit Insurance Corporation was received by one of the state banking departments. Excerpts from it will indicate the close attention which this particular corporation gives to state legislation.

Another regular session of the ———— state legislature is approaching and I seek your indulgence to permit me to take up again with you the matter of our proposal for certain banking legislation which we have heretofore submitted to you and have been submitting to the various states.

To our four page letter under date of ———, going into certain detailed explanation of our proposals, you were good enough to make a reply on ———, in which you indicated that further consideration would be given to some of them and expressing lack of agreement as to the advisability of recommending certain others.

Every state of the union except three have enacted a portion of our proposals. . . . About twenty of our jurisdictions have passed all our proposals in the *exact phraseology in which we have submitted* them, or practically so. They were framed after considerable research and thought and have been suggested to the different states for the purpose of affording a more certain and practical cooperation and of giving state banking institutions a larger opportunity to obtain the full benefit of federal deposit insurance⁴⁶

In answer to an inquiry made in connection with this study, the General Counsel of the Federal Deposit Insurance Corpora-

for example discretion was vested in the State Commissioner in respect to the appointment of the F. D. I. C. as the liquidator of a closed insured bank."

Letter dated May 24, 1938, Department of Financial Institutions, Indiana, said in part:

"With reference to the appointment of the Federal Deposit Insurance Corporation as Receiver of State banks, will say that although legislation making this possible has been advocated by the Federal Deposit Insurance Corporation, both at the sessions of our General Assembly of 1935 and 1937, and they have on each occasion furnished us with proposed bills for that purpose, such legislation has, in fact, never been introduced, because opposition by both the present supervisory authority in this state and by the banking committee of both Houses of each of those sessions of the General Assembly."

⁴⁶ Letter copied from the file of a state official.

tion, in a letter dated May 16, 1938, wrote as follows concerning the participation of his corporation in state legislation:

This office, as suggested in your inquiry, cooperated with state authorities in obtaining desired legislation and to that end submitted drafts of state laws. These were submitted by this office in each instance to the attorney general of the respective states, its state banking authority and the state bankers association. It is believed that practically without fail the enactment of such legislation followed the approval of same by the authorities referred to. Although, in some instances, certain states made it mandatory that certain things should be done in conformance with such legislation, it was made plain by this Corporation in any of its suggestions that it could be adopted as granting permissive authority and not mandatory requirements. *To a large extent the drafts submitted by this corporation were adopted intact or substantially so.* Naturally, there were changes, particularly of phraseology, on the part of some Legislatures *and in a very considerable number of instances where such changes were made, the drafts were submitted to this office for consideration and comment.*

An examination of the laws referred to by Mr. Birdzell would convince anyone that he does not overstate the case when he refers to their uniformity.

This type of federal solicitation for desired legislation is not limited to the Federal Deposit Insurance Corporation. The following extracts are taken from a letter which was sent by the Federal Home Loan Bank to this same state banking department.

We are very much interested on behalf of the system and our member institutions, in enactment by the legislature of the bill to make consolidated debentures of the Federal Home Loan Bank a legal investment for savings banks. . . (Paragraph two gave a technical explanation of the bill.)

I very much hope that with this explanation you will feel that you can commend this bill to the Banks Committee in each house.⁴⁷

⁴⁷ Letter copied from the file of a state official.

This same federal agency writes in reply to an inquiry sent by the present author:⁴⁸

. . . . In order to assist the various State Legislatures, we have from time to time furnished a specimen conversion statute in the form of Section 35(a) of the proposed Uniform Savings and Loan Act (Page 28) copy of which I am enclosing herewith.⁴⁹

In these instances, significantly enough, the suggestions for legislation originated in a federal corporation, and the procedure was first to enlist the aid of a state department, which was then expected to influence the state legislature. Here the approach was very effective, for the banking department of this state takes the leadership in sponsoring state banking legislation. On the whole any proposal which is satisfactory to the banking department in the state is likely to be accepted by the legislative committee on banking.

The other technique—mutual consultation and revision by the federal corporations of legislation drawn up in the first instance by the state—has the double advantage of being both useful and spontaneous. Much of this legislation is designed to make the states recipients of federal subsidies as quickly as possible. Therefore it is quite appropriate that proposed bills are often submitted to Washington for approval and if necessary, for alteration, so that upon passage the locality concerned will be able immediately to participate in the federal program. Here again the collaboration takes place between the federal corporation and the state department. This type of collaboration is evidenced by the following letter sent by the R.F.C. to one of the state departments.

You will find enclosed a proposed redraft of this section.

(The draft then follows)

48 Letter, dated May 12, 1938.

49 See also Leon H. Keyserling, "Low Rent Housing," 11 *State Government* 83 (1938). Mr. Keyserling, General Counsel for the United States Housing Authority, established in 1937, indicates that this government corporation is prepared to submit suggestions for legislation to states who wish to participate in the benefits of the United States Housing Act.

We trust that the enclosed draft meets your approval and should appreciate your comments. . . .⁵⁰

The procedure evidently involved the submission of a proposed section, its revision in Washington and its return to the state department concerned.

From the State Banking Commission of Wisconsin comes further evidence of the use of the same technique. Counsel for the Commission writes:

The legislation affecting the Federal Deposit Insurance Corporation and Reconstruction Finance Corporation was referred to the Washington offices of these corporations for their approval before being introduced in bill form.⁵¹

Occasionally pressure from some of the federal corporations has been even more direct. The Federal Savings and Loan Division sent a paid lobbyist into the state legislatures to help in securing legislation when it first began its campaign to convert state savings and loan associations into federal associations. The use of a paid lobbyist was subsequently discarded and the division has since relied on regular officials of the corporation.⁵² The Superintendent of Banks of Georgia reports that in a recent special session of the state legislature an attorney for the Federal Home Loan Bank remained in the state capital for practically the entire session to secure the passage of a conversion statute, a draft of which was drawn in the first instance by the Washington office.⁵³ The Federal Home Loan Bank also used direct pressure in its attempt to defeat what it considered to be an unsatisfactory conversion bill before the New York Legislature of 1937. The Washington office considered this bill unsatisfactory because it made con-

⁵⁰ Letter from a state department file.

⁵¹ Letter dated May 25, 1938.

⁵² Interview, Mr. Emery J. Woodall, Jan. 30, 1937, Associate General Counsel, Federal Home Loan Bank Board.

⁵³ Letter dated May 20, 1938 from Mr. R. E. Gormley, Superintendent of Banks.

version more difficult. Pressure was exerted against the bill not only while it was in the legislature but also when it was before the Governor. A letter sent by the Home Loan Bank Board at that time to Governor Lehman contained the following paragraph:

We believe that those in the Assembly dealing with this question were not fully advised with respect to this legislation and we request that Assembly Int. be not permitted to become law.⁵⁴

The bill, nevertheless, became a law. In this case the influence of the New York State Banking Department was stronger than that of the Federal Home Loan Bank. It is also considered by well-informed persons in Albany that the Federal Home Loan Bank uses the State League of Savings and Loan Associations, a private organization, as a vehicle for pressing desired legislation.

Still another illustration of direct pressure may be cited from the activities of the Federal Land Bank of Springfield, Massachusetts, a Farm Credit Administration unit, in its effort to defeat a proposed bill before the New York Legislature in its 1938 session. The bill was designed to eliminate suits for personal deficiency judgments following mortgage foreclosure actions. Farm Credit was interested in the defeat of the bill because it reduced the safety of its own investment. Mr. O. D. Roats, General Counsel of the Land Bank, sent representatives to Mr. Nathan D. Sobel, Counsel to the Governor of New York State. This visit was followed with letters and memoranda, all urging the defeat of the bill. The federal agency urged that if the bill itself could not be defeated, the Federal Farm Mortgage Corporation, the Farm Credit Administration or "any institution or corporation now or hereafter operating under the supervision of the Farm Credit Administration" should be made exempt from the operation of the bill.⁵⁵

⁵⁴ Letter dated May 1937—Files of the Governor of New York State.

⁵⁵ Letter dated March 2, 1938, from O. D. Roats, General Counsel of Farm

In 1935, at the peak of the New Deal activity in Washington, so many federal agencies, corporate and otherwise, became interested in permissive action of one kind or another in the state legislatures that suggestions for state legislation often conflicted. To remedy this situation the President of the United States ordered that all proposals for state legislation emanating from federal agencies must clear through the National Emergency Council. This method of clearance was never considered very satisfactory. As Mr. James W. Fesler recently analyzed it,

. . . . It was originally intended that the field representatives of the National Emergency Council should not only contact the State administrative agencies but should also supervise the contacts of Federal agencies with State legislatures. This function has never been exercised to any considerable extent, both because the State directors are obviously incompetent to handle the technical details of such bills . . . and because Federal agencies are loath to place the fate of legislation vitally important to them in the hands of anyone outside their own respective organizations.⁵⁶

Mr. Eugene S. Leggett, the executive officer of the National Emergency Council, replied to an inquiry about its functions on June 7, 1938,

Federal agencies are still clearing state legislation through the National Emergency Council. The two agencies that use this service most frequently are the Federal Home Loan Bank Board and the United States Housing Authority. In some instances the agencies do prefer to deal directly with the state legislatures. The N.E.C. has handled over five hundred pieces of legislation since its inception.

Credit Administration of Springfield, District No. 1, to Mr. Nathan D. Sobel, Counsel to the Governor of New York State.

Letter dated March 2, 1938, from Mr. O. D. Roats, General Counsel of Farm Credit Administration of Springfield, District No. 1, to Hon. George R. Fearon.

Letter dated Feb. 28, 1938, from G. W. Lamb, President, Springfield Bank for Cooperatives to New York State Legislative Committee.

⁵⁶ *Executive Management and the Federal Field Service, The President's Committee on Administrative Management, No. 4*, United States Printing Office, Washington, 1937, p. 38.

Conversations and correspondence with corporate officials reveal that a just estimate of the part played by the N.E.C. in furthering legislation in the state lies somewhere between the estimate of Mr. Fesler and that of Mr. Leggett. It more closely approaches the former than the latter.⁵⁷

All this evidence of legislative collaboration between federal corporations and state agencies is fragmentary. Nor can procedures be described with any precision. This is due to several factors. One reason is that these procedures are informal and vary from state to state depending on the political situation, the strength of the state agencies, and the aggressiveness of the particular federal agencies. Another reason for the paucity of information is the reluctance of most federal agencies to admit how closely they watch state legislation. It is only when they write privately to state authorities that they record their activity quite frankly. This reluctance is natural enough in the face of the hostility in certain quarters to what is interpreted as increased concentration of power in the national government. It is also natural that the officials who have been educated in the notion of a rigid division of power and administration between the states and the central government feel a sense almost of guilt when faced with the realities of the "new federalism." These realities include the necessity of federal-state cooperation in many types of activity, one of which is obviously legislation. With the federal government committed in the immediate future to a program which will necessitate the passage by the states of considerable complementary legislation it is necessary to develop patterns of legislative cooperation. The problem really becomes one of delimiting proper and desirable federal-state consideration of state bills so as to facilitate the activities of both units of government. A concrete ex-

⁵⁷ Letter dated June 10, 1938, from United States Housing Authority. General Counsel for this agency reports that all his suggestions for legislation still clear through the National Emergency Council.

Letter dated as late as May 17, 1937, sent by the New York State Director of National Emergency Council on behalf of the Federal Home Loan Bank Board to the Hon. Charles Poletti, legal counsel to the Governor at that time.

ample is the question of the propriety of having the officers of the Federal Home Loan Bank urge the Governor of New York to veto a certain bill which it had previously tried to defeat in the legislature. Does such action go beyond desirable limits?

Some federal agencies go to great lengths to disavow their influence over the passage and content of state laws. Mr. James L. Fly, the general counsel of the T.V.A., replied in response to an inquiry that the part played by his organization in local legislation was a modest one. According to him, it consisted in "making available to the proper public officials technical experts and experienced draftsmen on the Authority's staff."⁵⁸ This estimate does not jibe with the report of the National Resources Committee entitled *Regional Factors in National Planning*, which quotes one of the governors of the Valley as saying:

Of course we cooperate with the T.V.A. to the fullest extent. We ask them what legislation they consider necessary. After all we have wanted to build dams, attack the erosion problem, and all these other things. But we have not had the money. . . .⁵⁹

This same report states that the T.V.A. cooperated with the Tennessee Department of Health in the formulation of bills to be introduced into the state legislature.⁶⁰ Another corporation attempted to show that a particular law which achieved widespread acceptance in many states had been locally developed in the respective jurisdictions. An attorney from the office of the general counsel of this agency writes in answer to an inquiry:

Our records indicate that the following thirty-seven states now have conversion laws: [A list of the states then follows.] The provisions in these statutes are, however, not uniform but differ both as to substance and procedure from State to State.⁶¹

⁵⁸ Letter dated July 5, 1938.

⁵⁹ United States Government Printing Office, Washington, December 1936, p. 107.

⁶⁰ *Ibid.*, p. 105.

⁶¹ Letter dated May 12, 1938, from the Federal Home Loan Bank Board.

The inference is probably intended to be that considerable local inventiveness went into the framing of this law in the thirty-seven states. An analysis of these laws, however, reveals greater similarity than the letter would lead one to expect. This statute covered six main provisions. Of the thirty-seven statutes, a majority contained identical provisions as to the manner in which the conversion meeting was to be called; as to the number of days required to file the report of such meeting; and as to the provision that upon conversion all association property should by operation of law and without any deed or act of conveyance become vested in and belong to the successor organization. Fourteen of the laws were identical in all but one feature. It might be argued that the states merely were engaged in the familiar practice of copying each others' laws. This was hardly possible here since the enactments were passed within too short a space of time. A majority of them became law during the 1935 legislative session. In addition the fact that state laws not only adopt present federal standards but even incorporate by reference regulations to be adopted by federal corporations in the future, indicates that there might possibly have been considerable influence from Washington and very little in the way of independent study and analysis at home. Quotations from a few provisions of such laws will illustrate the point. A Pennsylvania statute provides:

Sec. 1. Be it enacted, etc.: That on and after the passage of this act, it shall be lawful for executors, administrators, guardians, and other trustees, within this Commonwealth, to invest trust funds in their possession or under their control in shares of any Federal Savings and Loan Association or other institution within the Commonwealth, to the extent to which the withdrawal or repurchaseable value of such shares now are, or may hereafter be, insured by the Federal Government of the United States, *through the Federal Savings and Loan Insurance Corporation, under acts of Congress of the United States of America now in effect or which may hereafter be, enacted.*⁶²

62 Pa. Laws 1935, p. 1025.

A Texas statute provides:

That, hereafter, all bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, which have been, or which may be issued by the Federal Home Loan Bank Board, or Home Owners Loan Corporation, or by any Federal savings and loan association, or by the Reconstruction Finance Corporation, or by the Federal Farm Loan Board, or by any Federal Land Bank, *or by any entity, corporation or agency which has been or which may be created by or authorized by any act which has been enacted, or which may hereafter be enacted, by the Congress of the United States*, or by any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged, or encumbered homes, farms and other real estate, shall hereafter be lawful investments for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits, where deposits of bonds or mortgages are authorized by law to be accepted.⁶³

A Utah statute provides:

Sec. 2. . . . also, to subscribe for stock for and acquire any stock, debentures, bonds or other types of securities of the federal deposit insurance corporation *and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.*⁶⁴

The analysis as thus far presented shows some federal corporations assuming the initiative in relation to state legislation. A superficial examination might lead one to think that this sort of activity is necessarily consequent upon the corporate form, or that the use of the corporate form separates these agencies from the government as a whole, so that they regard themselves as bodies somewhat like private pressure groups, seeking a particular program. On the other hand the same activity might have been caused for reasons which have little to do with the corporate form. One explanation is that the programs

⁶³ Tex. Laws 1933, ch. 160, p. 406.

⁶⁴ Utah Laws 1935, p. 17.

were conceived during an emergency period and were designed to go into effect quickly. The federal government had therefore to take a decisive position to overcome existing obstacles in state law. In addition, the necessity for concomitant enabling legislation by the states arises whenever the national government enters into states as a participant in economic activities. The government agency then becomes entangled in a tissue of limiting state legislation. It encounters the restrictions in state law designed for private business and to provide a safeguard against municipal extravagance. Thus the government corporations like the Federal Deposit Insurance Corporation, Home Owners' Loan Corporation, the R.F.C. and the T.V.A., which actually offered economic services to the community, were the very ones which needed the most enabling legislation, while other government corporations not similarly engaged required little state legislation. Federal agencies not cast in the corporate form but engaged in the service type of activity have been just as active in state legislatures. The Federal Housing Administration and the Public Works Administration are examples. There is as much uniformity of phraseology to be found in the state laws passed between 1935 and 1937 permitting states to take advantage of the National Housing Act as was observed in the conversion statutes dealing with savings and loan associations referred to earlier.⁶⁵ The general counsel for the Federal Housing Administration describes the legislative activities of the agency in the following unusually frank terms:

In most of the states, the Governors or other state officials requested that we send them a draft of a bill or bills which would enable the various investing institutions in their respective states to take advantage of our program. In numerous states a representative of this administration appeared before legislative committees to discuss the legislation in question, and to explain the objects of the National Housing Act, and the operations of the Federal Housing Administration. Since the enactment of legislation in most of the states was essential to enable local investing institutions and

⁶⁵ *Supra*, p. 138.

home owners to have the full benefits of the Federal Housing Administration, we have maintained a division in the Legal Department to give advice on state legislation and to endeavor to obtain some degree of uniformity therein.⁶⁶

Letters received from the state banking departments of several states corroborated the above statement and indicate in addition that representatives of the Federal Housing Administration spent a portion of the legislative session in their state capitals to further the housing program.⁶⁷ Referring to the Public Works Administration a government official said recently:

Too much credit cannot be given to the activities of the Public Works Administration in recommending this type of legislation at a time when tangible assurance for financial assistance could not be held out to the states. I am glad to say that the activities so auspiciously begun by the Public Works Administration in connection with *recommended* legislation (to the states) have been continued by the United States Housing Authority.⁶⁸

Legislative activity is apparently not limited to the government agencies under corporate form.

Another question that seems worth considering in this analysis is whether the drafting of state laws was in any way determined by the form of the federal agency concerned. Does an examination of these laws reveal either a marked desire or a reluctance to deal with government corporations as against departments of the federal government? Does it reveal a greater tendency to give exemptions from regulation or taxation to non-corporate agencies than to corporate ones? In short, as far as state legislatures are concerned, what difference does the corporate form make? Choosing from the state laws almost at

⁶⁶ Letter dated May 1938 from Mr. Brabner Smith.

⁶⁷ Letter dated May 31, 1938 from New Mexico State Bank Department. Letter dated May 28, 1938 from Washington Division of Banking.

⁶⁸ Keyserling, L. H., "Low Rent Housing," 11 *State Government* 83, May 1938.

random one finds no sign of interest in the form that the federal agency takes. For example a Texas law provides that :

Sec. 1. That, hereafter, all bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, which have been, or which may be issued by Federal Home Loan Bank Board, or Home Owners Loan Corporation, or by any Federal savings and loan association, or by the Reconstruction Finance Corporation or by the Federal Farm Loan Board, or by any Federal Land Bank, *or by any entity, corporation or agency which has been or which may be created by or authorized by any act which has been enacted, or which may hereafter be enacted, by the Congress of the United States* or by any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged, or encumbered homes, farms and other real estate, shall hereafter be lawful investments for all fiduciary and trust funds in this State, . . . ⁶⁹

A Michigan law provides that :

No tax shall be imposed upon any building and loan mortgage or upon any mortgage made and running to *the reconstruction finance corporation or to any other United States governmental corporation or agency or trustee for the benefit of such governmental corporation or agency*, to secure a loan from such governmental corporation or agency, . . . ⁷⁰

A South Dakota statute provides :

Sec. 6. The Provisions of Sections 1, 2 and 3 of Chapter 138 of the South Dakota Session Laws of 1933, as amended by this Act which prohibit the taking or enforcement of a deficiency judgment or otherwise enforcing the deficiency on any mortgage note or mortgage given in payment of the purchase price of real estate and the provisions which limit the enforcement of liability on such note or mortgage to foreclosure in rem, *shall not apply to any note or mortgage in favor of or held by the United States of America or any agent, agency or instrumentality of the United States or any*

⁶⁹ Tex. Laws 1933, ch. 160.

⁷⁰ Mich. Laws 1935, act 14, sec. 2.

*corporation or association whose obligations are guaranteed in whole or in part by the United States.*⁷¹

An occasional statute, rare indeed, takes cognizance of the corporate form as such. One such statute is a New York law passed in the 1935 session which exempts *corporations* whose stock is held by the United States from all taxes except recording fees "from all provisions of law relating to the doing of business in this state by a foreign corporation," from examination or supervision by any state department or officer.⁷² This is not meant to imply that there are not many statutes which mention specific corporations by name, such as the ones permitting building and loan associations to invest in bonds of the Home Owners' Loan Corporation, but these statutes are not in the least concerned with the form of the agency as such. Similarly, many statutes of this variety are to be found for other spending agencies of the federal government, the organization of which is non-corporate.⁷³

The discussion so far has developed the idea of state-federal harmony. The state legislatures have passed hundreds of permissive laws and laws designed to exempt federal agencies from operation of state law. It is noteworthy that practically no laws were passed which might indicate resentment against these new corporations. The only unfavorable reactions found were embodied in two statutes, the first of which was meaningless and the second never carried out. The first was a Louisiana state law which said:

Be it enacted by the Legislature of Louisiana, That no governmental agency, including corporations with corporate authority only as approved by the President of the United States, established by the Congress or by the President of the United States under the provisions of any law or resolution of the Congress of the United States, and no officer, agent or employee thereof, shall exercise in

⁷¹ S. D. Laws 1935, ch. 150, sec. 6.

⁷² N. Y. Laws 1935, ch. 305.

⁷³ Statutes to enable the government to spend under the Federal Housing Administration, Works Progress Administration.

this State any power not delegated to the United States by the Constitution of the United States, but reserved by the Constitution of the United States to the State of Louisiana, or expend any public funds appropriated or made available by the Congress, in the exercise or attempted exercise of any such power.

Sec. 2 omitted

Sec. 3. The Legislature declares that, as the lawful representative of the people of the State of Louisiana it enacts this legislation to preserve and protect the powers reserved to the State of Louisiana and the people thereof by the Tenth Amendment to the Constitution of the United States.⁷⁴

This law is obviously pointless since it attempts to prevent federal corporations from violating the Tenth Amendment in the state of Louisiana. It seems illogical to enact a law in order to prevent an unconstitutional act. One might excuse it perhaps as a mere by-product of the exhaustion characteristic of the fourth extra session at which this law was passed. Or perhaps this was a last tribute to the spirit of the late Huey Long who died just before the opening of the session concerned.

The second law was passed by the 1935 session of the Tennessee legislature. It provides:

That each county and incorporated municipality of the state is hereby authorized to contribute such amount as such county or municipality sees fit to a fund to be expended in making a survey for the purpose of gathering information and data to procure relief on account of the withdrawal from taxation of real estate and personal property under the program of the Federal Government by which development is made in the Tennessee Valley and particularly in the State of Tennessee.⁷⁵

Mr. John B. Blandford, Jr., General Manager of the Tennessee Valley Authority reports that no survey was ever conducted pursuant to this law.⁷⁶

⁷⁴ La. Laws 1935 (4th Extra Session), act 21.

⁷⁵ Tenn. Laws 1935, ch. 184, sec. 1.

⁷⁶ Letter dated March 17, 1938.

Aside from these two abortive measures, the state legislatures seem anxious enough to cooperate. Collaboration with the central government on legislation can take place without too seriously upsetting the operation of the federal system. We accept lobbying across state lines as a matter of course when the source is a private interest. Lobbying by the federal government in our state legislatures ought also to become familiar and accepted if it is kept within the limits of collaboration. It virtually becomes the duty of national officials to anticipate and suggest to the states the necessary complementary legislation. The concept of a federalism which sets up two independent spheres of government must be changed in the light of altered conditions.

CHAPTER VI

THE STATE COOPERATES ADMINISTRATIVELY WITH GOVERNMENT CORPORATIONS

IN the last chapter an analysis was made of the state laws which were for the most part added to the statute books on the initiative of various government corporations. This chapter will study the modes of cooperation between states and federal corporations from the standpoint of administration. Although the government corporation nearly always assumed the leadership in its collaboration with the states, the activity was conducted in various ways.

The cooperative techniques used may be a mere informal exchange of information over the telephone which never even finds its way into a government file.¹ On the other hand collaboration may occur in a formal way following upon a previous written agreement between state and corporation officials. Such joint action can of course only be carried out pursuant to state or federal law, express or implied. Many of the state statutes discussed in the last chapter laid the groundwork for such concerted action. Illustrations in point are state statutes which permit state bank examiners to share their otherwise confidential reports with officers of the R.F.C. and the Federal Deposit Insurance Corporation, and which permit state savings and loan associations to share their offices with federal savings and loan associations.² Federal laws setting up or anticipating the formation of federally financed corporations often specifically sanction joint endeavor. In the T.V.A. Act for instance the statute expressly provides at several points for joint participation with state authorities. Section 5(c) reads:

1 Interview with Mr. J. S. Hutto, New York State Department of Banking, May 1938.

2 *Supra*, p. 124.

To cooperate with, *National, State, district, or county* experimental stations or demonstration farms, for the use of new forms of fertilizer practices during the initial or experimental period of their introduction.

Section 22 of this same act says in part:

. . . . And the President is further authorized in making said surveys and plans *to cooperate with the States affected thereby*, or subdivisions or agencies of such States, . . . to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.³

Another federal statute explicitly encourages interchange of information between state and federal corporate officials, and authorizes the Federal Deposit Insurance Corporation to furnish its reports on state banks to the state banking authorities.⁴ Still other federal statutes provide for the use without compensation of state officers by government corporations.⁵ The Executive Order which authorized the formation of the Electric Home and Farm Authority Inc., included the rather typical provision that:

The board of directors may also, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the services of the officers, employees, and the facilities thereof and, with the consent of the State or municipality concerned, may utilize such State and local officers and employees as it may deem necessary.⁶

The federal statutes setting up the United States Housing Authority, the T.V.A., and the Bankhead Act referring to the subsistence homesteads projects, provided that these corporations might make agreements with local authorities in respect

3 48 Stat. 58, 60, 61 (May 18, 1933) as amended, 49 Stat. 1075, 1076, 1080 (Aug. 31, 1935); 16 U. S. C. A. 831.

4 49 Stat. 684; 12 U. S. C. A. 228 (Aug. 23, 1935).

5 50 Stat. 888; 42 U. S. C. A. 1401 (Sept. 1, 1937).

6 Ex. Order 6514 (Dec. 19, 1933).

to money payments in lieu of taxes.⁷ Such statutes obviously anticipate negotiations between the two levels of government in order to work out satisfactory agreements for payments in lieu of taxation. The negotiation of such agreements involves complex and novel legal and administrative problems, not the least of which consists in locating the proper local authority with which to execute the agreement.⁸ Thus all the legislation just described recognizes the fact that a present-day federalism is unworkable if interpreted within the limits of the doctrine of rigid territorial separation of powers.

Corporation administrators seem to be more ready to admit to cooperative efforts in administration than in legislation. One explanation for this may arise from the long history of federal-state cooperation in supervising grants-in-aid in the administration of which the federal government has played a non-aggressive role.⁹ This experience has created an attitude favorable to further cooperation in the administrative field. Also since the basis for administrative cooperation exists for the most part in specific consent embodied in state or federal legislation, the officials are more certain of their constitutional position. They therefore feel that they can be more candid in referring to this situation than when discussing their role in legislation.

Federal corporate officials point out that they cooperate informally with state agencies along many lines. The Federal Savings and Loan Insurance Corporation reported that it collaborated informally in at least four different ways.¹⁰ It

7 48 Stat. 58; 16 U. S. C. A. 831 (May 18, 1933), 49 Stat. 2036, ch. 868; 40 U. S. C. A. 432 (June 29, 1936), 50 Stat. 888; 42 U. S. C. A. 1401 (Sept. 1, 1937).

8 Monroe Oppenheimer, Acting General Counsel, Resettlement Administration, June 30, 1936 (*G. C. Memo No. 136*), p. 3.

9 Macdonald, A. F., *Federal Aid*, Thomas Y. Crowell, N. Y., 1928, p. 260; Key, V. O., Jr., *Administration of Federal Grants to States*, Public Administration Service, Chicago, 1937, p. xii, 369.

10 Federal Home Loan Bank Board, *Fourth Annual Report*, United States Government Printing Office, 1937, pp. 44-46.

has arranged conferences with state banking authorities at Washington and at state capitals for the financial rehabilitation of state-chartered institutions, notably in California, Colorado, Georgia, Indiana, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin.¹¹ A particularly successful illustration of this type of joint activity occurred in New Orleans. All the state savings and loan associations in this city had been closed for a period varying from one to four years. They conferred jointly with state supervisory officials and with the Federal Savings and Loan Insurance Corporation. Thereupon all the state associations applied for insurance simultaneously. Since there was some uncertainty as to how the people would react to a sudden resumption of activities, a local advertising campaign advocated the value of such insurance. When the associations were reopened few shareholders withdrew.¹²

The Federal Savings and Loan Insurance Corporation has also used conferences with state supervisors to effect a successful solution of other common problems. As a result the conferees entered into an arrangement for joint periodic examinations of state savings and loan associations insured with the Federal Savings and Loan Insurance Corporation. These joint examinations are carried on by representatives of the state supervisor's department and the examining division of the Federal Savings and Loan Insurance Corporation.¹³ The joint examinations have two advantages. In the first place they are more economical than individual ones; and secondly, the fewer the number of examinations the more smoothly the association is able to function.

With the advice of state bank counsel and state supervisors the same Federal Savings and Loan Insurance Corporation has

11 *Ibid.*, p. 43. Also rehabilitation programs have been carried on in about thirty states. Letter, dated June 20, 1938, from Federal Savings and Loan Insurance Corporation.

12 *Ibid.*, p. 46.

13 *Ibid.*, p. 45.

also prepared model forms of charters, by-laws and certificate forms.¹⁴ The Federal Home Loan Bank Board (supervising agency for the Federal Savings and Loan Insurance Corporation) has through its examining division worked with supervisors of state building and loan associations in preparing forms for joint examinations of insured state savings and loan institutions. According to the *Fourth Annual Report* of the Federal Home Loan Bank Board:

. . . . When a joint examination form is agreed upon one examination of an association will suffice for the building and loan division of the State, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation and the Home Owners' Loan Corporation.¹⁵

The Federal Deposit Insurance Corporation is another corporation which has worked out various techniques for cooperating with states in joint examinations of local institutions. The General Counsel for this corporation described this activity in a recent letter as follows:

The method of the examinations referred to differs in different jurisdictions. In some states examinations required by law are conducted jointly by representatives of this organization and of the state banking department; in some, one examination by agreement is conducted by our examiners and another examination is conducted by the examiners of the state department, exchange of reports being had. It is believed that arrangements have been perfected so that not more than two examinations of banks are conducted in any one year in any state, unless some special circumstance arises that definitely justifies or requires an additional examination or examinations of a certain bank or banks.¹⁶

An official of the New York State Banking Department characterized the joint examination with the Federal Deposit Insur-

¹⁴ *Ibid.* In addition trade organizations for savings and loan associations cooperated in this venture. Letter dated June 20, 1938, from Federal Savings and Loan Insurance Corporation.

¹⁵ *Supra*, p. 125.

¹⁶ Letter dated June 9, 1938.

ance Corporation as very successful.¹⁷ It is an informal procedure and not based on any set agreement. It is either the result of a casual meeting or a telephonic communication. The official reported that both agencies provide a joint personnel for each bank examination. These men work side by side. After the examination they discuss the problems involved, and then press for changes which they wish these banks to make. This state department also reports that it has conferences with officials of the Federal Deposit Insurance Corporation to work out standard forms to facilitate these examinations.

The Reconstruction Finance Corporation has likewise worked informally with state banking departments. It has cooperated most frequently in attempting to recapitalize state banks. The method of joint action is flexible, but the procedure with at least one state banking department is roughly as follows: Officials of the R.F.C. and a particular state banking department confer with regard to a particular bank. The state banking department then makes pertinent suggestions to the bank concerned. These are accompanied by the further suggestion that the bank discuss its problems with the R.F.C. for additional advice and aid. The R.F.C. then works out a plan for recapitalization. It draws up a tentative certificate to this effect which it then asks the bank to submit to the state banking department for acceptance under the state law. This certificate is usually accepted, the whole procedure having followed along lines laid down in the beginning by the two sets of officials concerned. The problem is solved without obstruction because the officials of the state and federal agency work together according to standards previously agreed on. This kind of joint activity rarely finds its way into a government file, largely because it is so informal.

Other corporations besides banking and credit institutions cooperate informally with localities. The T.V.A. has collaborated with state agencies at many junctures depending mainly on friendly personal relationships with officials of different

17 Mr. J. S. Hutto, May 1938.

governmental levels, the calling of conferences,¹⁸ and the occasional setting up of a joint committee.¹⁹ For example the T.V.A. legal staff has helped law departments of various localities to overcome obstacles in the way of securing cheap electricity.²⁰ The Authority has cooperated with the Tennessee Emergency Relief Administration in making studies of rural electrification²¹ and with state agricultural extension services in making studies of the feasibility of proposed cooperative manufacturing enterprises.²² By arrangement with a state agricultural extension department a number of small cooperatives are demonstrating a community electric refrigerator designed in the first place by T.V.A. in cooperation with a state engineering experiment station.²³ The Authority and other federal agencies have joined with state planning boards, and various state departments, in studying problems relating to land planning and utilization.²⁴ State highway officials are called into consultation by the Authority in connection with the building of permanent roads.²⁵ Perhaps one of the most interesting cooperative ventures launched by the T.V.A. without recourse to a federal agreement has to do with the administration of justice. What might have been a troublesome problem, namely the determining of who should police the areas around the various dams, has been solved very amicably.²⁶ This question is theoretically

¹⁸ *Regional Factors in National Planning*, National Resources Committee, United States Government Printing Office, Washington, 1935, p. 104. Also letter dated June 13, 1938, from Mr. John B. Blandford, Jr., General Manager, T. V. A.

¹⁹ *Ibid.*, p. 105.

²⁰ It helped the city of Knoxville in its case against the Tennessee Public Service Company.

²¹ *Regional Factors in National Planning*, National Resources Committee, United States Government Printing Office, Washington, 1935, p. 101.

²² *Ibid.*, p. 103.

²³ Letter dated June 13, 1938, from Mr. John B. Blandford, Jr., General Manager, T. V. A.

²⁴ *Supra*, footnote 18, p. 103.

²⁵ *Ibid.*, p. 104.

²⁶ Letter dated March 8, 1938, from Mr. R. M. Hoisington, Public Safety Office, T. V. A.

a complicated one because, although the land purchased for the construction of dams in the Tennessee Valley is held in the name of the United States, it is not held within the exclusive jurisdiction of the United States. The criminal and civil laws of the respective states in which such land is located are applicable to the property. The conflict of jurisdiction was solved by having the sheriff of each county in which there is reservoir property, grant deputyships to the men hired by the T.V.A. to carry on police duties. These men form the T.V.A. Public Safety Service, which is divided into seven units, one at each of the Authority's projects, whether completed or under construction.²⁷ The Public Safety Officer for the T.V.A. wrote in answer to a letter of inquiry that it was orally agreed that the Authority's officers would confine their deputyship to T.V.A. properties only, and not to utilize them on any surrounding territory.²⁸ This system does not apply at Wilson Dam, since such properties were ceded outright to the United States Government by the State of Alabama, and the United States Government therefore has exclusive criminal jurisdiction over this area. Another T.V.A. official wrote that in his belief this whole plan was adopted at the suggestion and with the fullest cooperation of the state officials concerned.²⁹

The T.V.A. also handles some of its educational problems in an informal manner. At the Chickamauga Dam, the problem is relatively simple, for the workers' children live in Chattanooga in privately owned taxable property and attend public schools. The T.V.A. merely participates therefore in the adult education and recreational program. It does this by assigning trained workers to assist local institutions in meeting the extra load imposed by the Authority's employees.³⁰

²⁷ *Ibid.*, footnote 26.

²⁸ *Ibid.*, footnote 26.

²⁹ Letter dated April 22, 1937, from Mr. James L. Fly, General Counsel, T. V. A.

³⁰ Letter dated June 13, 1938, from Mr. John B. Blandford, Jr., General Manager, T. V. A., see *Annual Report of the Tennessee Valley Authority*, United States Government Printing Office, Washington, 1936, p. 109.

The Federal Surplus Commodities Corporation is another federal agency which at present carries on a fair portion of its program through collaboration with state relief agencies and yet never uses the more formal method of written agreement.³¹ This corporation furnishes technical assistance to the states to work out less expensive and simpler distributing systems so that the state agencies may keep pace with the corporation's delivery of commodities. In drought areas the corporation has also assisted state agencies in moving cattle and sheep to areas where pasture was available.³² This cooperation depends largely on the good will of the two sets of officials. It is obvious, however, that the state has sufficiently compelling motives for welcoming participation in such joint work.

Thus far the cooperative techniques analyzed have been carried on through exchange of information, consultation, informal conferences, reciprocal acceptance of standards, and the mutual deputizing of officials. All of these techniques require great tact on the part of the officials involved, and a considerable subtlety and willingness on the part of the federal agency to be self-effacing. It is difficult to classify or describe all these methods of cooperation, for they are too elusive in their nature and too dependent upon personalities. In attempts to work out more dependable methods of collaboration governmental corporations have experimented with different forms of written instruments to be used as a basis for joint action. They vary in degree of formality from an exchange of letters to a regularly executed contract. They are used for many types of problems, ranging from the joint use of banking offices to highway relocation.

The federal savings and loan associations, under the supervision of the Home Loan Bank Board, were able to solve a complicated problem in federal-state administration by using a

31 Letter dated June 9, 1938 from Mr. F. R. Wilcox, Vice President of Federal Surplus Commodities Corporation.

32 *Report of Federal Surplus Commodities Corporation*, United States Government Printing Office, Washington, 1937, p. 4.

joint written agreement.³³ Certain state savings and loan associations which wished to convert themselves into federal associations discovered that there were assets on their books which were considered frozen and therefore unacceptable to federal authorities. To avoid delay in conversion of the other assets the federal regulations provided for a joint operating agreement. This permitted a joint use of the offices and personnel pending the liquidation of these unacceptable assets and a division of expenses between the newly constituted federal agency and the state officers conducting the liquidation.³⁴ The agreement provided that the new federal association might use the same employees, space and facilities as the state institution. The provision referring to expense required:

The proportion of total operating expenses to be paid by the new federal association shall be that proportion of the total operating expenses which the total assets of the new Federal saving and loan association bear to the total assets of both institutions.³⁵

33 Letter dated May 12, 1938, from Miss K. G. Dixon, Assistant Attorney, Federal Home Loan Bank Board.

34 See state laws discussed in Chapter V, p. 124 which permit the use of joint facilities.

35 Text of operating agreement follows:

Whereas, the undersigned State institution desires to transfer a portion of its assets to a Federal savings and loan association to be organized pursuant to section 6 of the Rules and Regulations for Federal Savings and Loan Associations in consideration of the issuance of share accounts of such Federal association to the undersigned or its nominees,

Now, THEREFORE, it is mutually understood and agreed:

1. The new Federal association may retain and employ the same employees as the undersigned institution.

2. The new Federal association may occupy the same space and use the same facilities as the undersigned. There shall be equitable division of such space to provide for adequate operating arrangements of the new Federal association.

3. The expense of operations of the two institutions shall be divided equitably between them. The proportion of total operating expenses to be paid by the new Federal association shall be that proportion of the total operating expenses which the total assets of the new Federal savings and loan association bear to the total assets of both institutions; Provided, however, that

The agreement was then signed by the federal institution, the state agency, and in certain states by the state supervising authorities besides. This type of agreement permitted an acceleration of the speed with which federal aid to savings and loan institutions could be brought to the states.

The T.V.A. has used a formal agreement to solve the problem of an educational program for the Guntersville Dam area. The construction village which has grown up around the dam site is in an isolated area. Children of dam workers live on tax exempt property. The situation therefore is different than the one at the Chickamauga site, previously described.³⁶ Since the building of the dam brought in many new persons and thus taxed the resources of the county schools, and since the property was tax exempt, it was only fair that the Authority contribute to the cost of education, whether adult or primary. The T.V.A. has for the most part adopted the policy of using the existing local facilities, but guiding their policies by the determination of teacher qualifications and curriculum objectives, and contributing to their support by reimbursing the localities periodically on the basis of services granted. The T.V.A. thus entered into two contracts for educational facilities at Guntersville.³⁷ The first provided that children of T.V.A. employees living in the Guntersville area might attend the county schools. The second was a comprehensive agreement entered into with the Boards of Education of Marshall County, Jackson County, and Madison County, Alabama, providing for all phases of em-

in no event shall the expenses payable by the new Federal Association exceed 25% of its gross earnings.

4. The undersigned State institution on and after the execution of this agreement will not acquire new investors' accounts, or make loans, except for the purpose of refinancing its existing loans.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this agreement in their respective names and their respective corporate seals to be affixed hereto this — day of —, 19—.

³⁶ *Supra*, p. 153.

³⁷ Letter dated June 13, 1938, from Mr. John B. Blandford, Jr., General Manager, T. V. A..

ployee training and recreation.³⁸ It is worth while to quote a few significant provisions from this agreement:

2. The Marshall County Board of Education agrees to provide a program of job training and apprentice training for employees of the Authority working at Guntersville Dam and at such places as may be designated by the head of the Guntersville Branch of the Authority's Training Section. This program of job training shall include training on the job, related classroom work, and the supervision of educational facilities in the workshop at Guntersville Dam.

3. The Madison County Board of Education agrees to conduct a camp library. . . .

5. The Madison County Board of Education agrees to provide a program of training for Negro employees of the Authority at such places *as may be designated by the head of the Guntersville Branch of the Authority's Training Section*. This program shall include general academic education, training in practical trade knowledge, instruction in health and citizenship, and recreation.

8. School Boards agree to *submit to the Training Section of the Authority such progress and financial reports as may be reasonably requested by the head of the Guntersville Branch of the Training Section from time to time*. Authority shall be entitled to inspect the records of School Boards in order to determine whether the program provided for herein is being satisfactorily carried out. School Boards will in this connection maintain complete and proper records, employ the necessary personnel, and purchase the books, supplies, equipment, and perform the other functions entailed in the rendering of these services. *No person shall be employed who has not been approved for such position by the Training Section of the Authority.*

9. There shall be an advisory committee composed of the Superintendents of Schools of Marshall, Jackson, and Madison Counties *and the head of the Guntersville Branch of the Authority's Training Section*. *The advisory committee shall promote, coordinate, and supervise the educational program set forth in this agreement.*

³⁸ Agreement between Board of Education of Marshall County, Alabama; Board of Education, Jackson County, Alabama; Board of Education, Madison County, Alabama and T. V. A. (July 2, 1937).

The agreement then continues with a paragraph specifying the monthly payment for each previously recorded service.³⁹ In addition the contract provides for termination on thirty days notice if unsatisfactory to either party. The contract was to run from July 1, 1937 to June 30, 1938. It was signed by representatives of the Boards of Education for the three counties concerned and by Mr. Arthur Morgan as Chairman of the T.V.A. Embodied in the contract was a resolution from each of the school boards, which authorized the signing of the instrument.

The two basic principles of this agreement are worthy of comment. Local facilities were to be used wherever they existed and the Authority retained an advisory and coordinating view of the whole program. Through the use of local facilities the Authority obtains a footing in the locality. The setting up of independent facilities by the Authority probably would result in superior services but might also tend to antagonize the people in the surrounding area who must remain solely dependent upon local school facilities.⁴⁰ The advisory capacity retained by the Authority places it in a position to raise the standards of education in the locality.

The Guntersville Dam is the only one under the control of the Authority in which written contracts cover the entire educational program. At Hiwassee Dam the recreational and adult education program is executed by voluntary work on the part of employee groups, merely with the aid of T.V.A. training staff members. However, contracts have been signed with the Murphy town library for library service, with Ducktown High School for children of T.V.A. employees living on tax exempt

³⁹ Marshall County Board of Education to receive \$455.00 for a job training project. Madison County Board of Education to receive \$715.00 for conduct of a library service and \$350.00 for conduct of a Negro training program. Jackson County Board of Education to receive \$500.00 for the conduct of a program for reservoir clearance.

⁴⁰ Confidential document in which the latter argument was advanced.

property, and with the Cherokee County Board of Education for job training.⁴¹

Comparable to the Authority's solution for the whole administration of an educational program through the medium of a written contract is its effort to set up a comprehensive health policy. The Authority decided that it had a twofold obligation in matters of health. It recognized its obligation not only to protect the health of its employees but also to counteract any ill effects to the health of the community from a construction program which necessarily involves the flooding of large areas of land.⁴² To that end it signed written contracts with the various state health authorities. Each contract bears the title,

Contract For A Program of Cooperative Health Work For The Protection Of The Health Of Employees Of The Authority And Of Local Communities From Health Hazards Created By Operations Of The Authority.⁴³

The contract provides that the particular state health department will furnish a public health service

. . . and that it will perform on behalf of the Authority such other services as may be jointly agreed upon by the Department and the Director of Health of the Authority. . . .

In addition the state department agrees in these contracts to choose personnel and to draw up a budget only upon agreement with the Authority. The Authority agrees to pay a certain sum per annum in monthly installments after proof that the services were rendered as contracted for during each preceding month.

41 Letter dated June 13, 1938 from Mr. John B. Blandford, Jr., General Manager, T. V. A. See also *New York Times*, p. 4, July 13, 1938, Mr. Russell B. Porter reports that: "It sent seventeen high school students last year to Ducktown, Tenn., thirty miles away, and will send twenty-seven next year, T. V. A. supplying bus transportation."

42 Letter dated March 8, 1938 from Dr. James A. Crabtree, Assistant Director of Health, T. V. A.

43 See Appendix II for complete text of a sample standard public health contract.

The agreement provides that it may be terminated on ninety days notice.⁴⁴

This same instrument has been used as a basis for joint research in malaria control with the State University and the University of Tennessee School of Medicine.⁴⁵

As in the education contract the Authority maintains final control over personnel standards and program, services being provided for locally. Similarly money is paid only for services rendered in the past according to the terms of the agreement. The public health contract is in conformity with the declared policy of the T.V.A. to work with and through existing local agencies whenever possible.

T.V.A. has employed the written contract in numerous other ways. Perhaps the most unusual instance deals with the necessity for relocation of portions of a town. The relocation project at the City of Caryville, part of which lies in the area which was flooded by the Norris Reservoir, is an illustration in point.⁴⁶ T.V.A. had to decide in this case whether to relocate the whole town or only replan certain sections of it. Authority officials reported that local sentiment favored merely the relocation and replanning of certain sections. At the instigation of the Authority, a Caryville committee of local residents was established to cooperate with the Authority in the replanning of the town. This committee worked with representatives of the Town Planning Section of the T.V.A.. The local committee handled all negotiations with the residents, such as acquiring rights of way for new roads, readjustment of property lines and agreements as to new sites.⁴⁷ On strictly economic grounds it would have been foolhardy for the Authority to carry on this preliminary program directly. As an outsider the Authority

44 Clarke, Jane P., "Joint Federal State Activity," 51 *Political Science Quarterly* 256, June 1936. See also: Clark, Jane P., *The Rise of a New Federalism*, Columbia University Press, New York, 1938, *passim*.

45 Letter dated March 8, 1938, from Dr. James A. Crabtree, Assistant Director of Health, T. V. A..

46 Draper, Earle S., "T. V. A. Replans a Town," *The American City*, January 1936, pp. 59-60.

47 *Ibid.*, at p. 59.

would undoubtedly have had to pay much more. When the initial negotiations were completed the plans for executing the project were all embodied in the terms of a contract entered into with the municipal authorities.

When the written contract has proved to be a too formidable method for describing certain joint administrative functions the T.V.A. has used the less formal sounding device of a memorandum of understanding. To coordinate the farm management program in the Valley, the T.V.A., the United States Department of Agriculture, together with agricultural colleges and affiliated agencies in the states of Tennessee, Virginia, North Carolina, Kentucky, Georgia, Alabama, and Mississippi, signed a memorandum of understanding on November 20, 1934.⁴⁸ The principles embodied in this memorandum were then used as a basis for specific subsequent contracts between the T.V.A. and state experiment stations for the study of specialized problems.

No detailed account has been made as yet of perhaps the most important use of the written agreement in furthering amicable relations between federal corporations and state governments. By federal statute the T.V.A., the Resettlement Administration for subsistence homesteads projects, and the United States Housing Authority have been authorized to negotiate payments in lieu of taxes with localities in which corporate property exists.⁴⁹ As has been shown earlier in this study, voluntary payments of this kind are perhaps the most feasible solution to this perplexing problem. Of course if reciprocal taxation were permitted it would avoid any necessity for such devices. To some persons the fairness of such a practice may appear questionable. As a result of it, probably only federal property would be taxed, since only the state, but not the national government levies a property tax. A confidential study made by an economist for one of the corporations makes the interesting

48 Referred to in *Contract for Joint Program of Agricultural Development and Watershed Protection Through Improved Fertilization*, Article 1, Par. 2 (Mimeo.).

49 *Supra*, pp. 69-71.

suggestion that if taxation of government property were permitted all around, the possibility of taxation by the state would prove an additional incentive for the introduction of government projects in any given locality. Payments in lieu of taxes offer a method by which the federal government can make voluntary reimbursement for services which are ordinarily financed by real estate taxation, including fire and police protection, educational facilities, street lighting, street cleaning, and garbage removal, in projects to which the federal government holds legal title. The federal statutes authorizing in lieu payments, of course limit the discretion of the corporate and local officials in their negotiations for the fair amount to be given in payment. For example, sec. 2 of the Bankhead Act which permits these payments, does so with the following proviso, namely, that the agreements for payment may be entered into only

“Upon the request of any State or political subdivision thereof, or any other local public taxing unit,” that in addition “Such sums shall be fixed in such agreements” and lastly that the sums fixed, “shall be based upon the cost of the public or municipal service to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such State or subdivision or other taxing unit from such project.”⁵⁰

These limitations presented various complications to the Resettlement Administration such as the problem of determining which services ought to be considered under this section for remuneration, and of computing the real cost of such services. This could only be agreed upon after long negotiation with the localities concerned and some consideration of a method of prorating the total cost of any particular public service between the project and the balance of the property within the taxing unit. Since the request for such an agreement was to come from the locality, some attention had to be given to the form which these requests should take. Resettlement solved this by

⁵⁰ 49 Stat. 2036; 40 U. S. C. A. 432 (June 29, 1936).

drawing up standard requests and agreement forms which it sent to the localities.⁵¹ The leadership here was obviously assumed by the federal agency.

The T.V.A. law on payments to localities created no real problems which needed to be solved by local negotiations since the statute definitely prescribed the percentage to be paid in lieu of taxes.⁵² The law provided that 5 per cent of the gross receipts received by the board for the sale of power be paid in lieu of taxes, with a provision for paying 2½ per cent additional under certain definite circumstances.

The United States Housing Authority, most recently established of the three corporate agencies, may under sec. 13 c

. . . enter into agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof with respect to any real property owned by the Authority. The amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation thereby.⁵³

The United States Housing Authority conducts its negotiations with the local authorities through discussion of the value of services rendered and reaches an understanding on such a basis. This corporation embodies the terms of its contract in letter form and it accomplishes its purpose through a signing of the letters.⁵⁴ A typical offer for payments in lieu of taxes is one dated March 3, 1938 and addressed to a Commissioner of the District of Columbia.⁵⁵ The letter states that the District of Columbia will supply to the Langston Project and to the inhabitants thereof all the services which are rendered to other property owners or inhabitants of the District of Columbia, the

51 Mr. Monroe Oppenheimer, Acting General Counsel, Resettlement Administration (*G. C. Memo. No. 136*), June 30, 1936, pp. 2-3.

52 48 Stat. 58; 16 U. S. C. A. 831 (May 18, 1933).

53 50 Stat. 888; 42 U. S. C. A. 1401 (Sept. 1, 1937).

54 Letter dated June 10, 1938, from Leon H. Keyserling, General Counsel, United States Housing Authority.

55 See Appendix I for complete text.

cost of which is ordinarily defrayed by ad valorem real estate taxation. The letter continues with an offer of a particular sum, in this case \$2,925 for the year, and with the promise that payment is to begin after the first tenant has moved in. The General Counsel for the United States Housing Authority, replying to an inquiry, writes that so far the less formal method of agreement through the device of signed letters has proved perfectly satisfactory.⁵⁶

The discussion thus far has shown the federal corporation in the role of a resourceful but not an innovating collaborator. It has used the methods of informal exchange of information, conference, joint committees, and the more formal devices of memoranda of agreement, letters and the written contract. All these methods had been evolved at an earlier date by non-corporate agencies seeking to assist in the improvement of local conditions. Certainly the methods used seem to have no connection with the fact that they were being employed by a federal corporation rather than by a federal department. In the future the federal corporation may assume a more dominant leadership in the control of local policy than have the government departments. It is too early to reach a conclusion concerning this. A study would have to be made of the number of times the corporation has withheld funds from localities because of failure to live up to the agreements. A detailed personnel study conducted with some finesse would also be required to discover how much real influence the government corporations exercised over the choice of local personnel—used for executing a joint administrative program. Lacking this, it can merely be stated in general that the corporate form contributes very little that is unique, from the point of view of federal-state relations in administration. It is apparent that considerable skill and flexibility have been developed by the government corporations in pooling national, state and local administrative resources for the harmonious functioning of all parties concerned.

⁵⁶ Letter dated June 10, 1938, from Leon H. Keyserling, General Counsel, United States Housing Authority.

CONCLUSION

MR. THURMAN ARNOLD, in his provocative study, *The Folklore of Modern Capitalism*, has said that it was part of the folklorist belief of 1937 to discourage that activity known as government and to encourage that activity known as modern business. The author then went on to suggest that the adoption of the corporate form by the government for new activities was an attempt at "asset bookkeeping." However, Mr. Arnold continued, this device did not "mislead" the opposition who were then able to attack the corporate activities of the government for two reasons: that when the government in corporate guise was successful it was supposedly interfering unfairly in industry; that when unsuccessful it was just a new method for increasing taxes. These attitudes represent some of the popular reactions pro and con to the entire experiment of governmental corporate activity. Mr. Arnold's exposition indicates with characteristic brilliance some of the traditional stereotypes conditioning popular prejudice. It has not, however, been the purpose of this study to give any judgment on the ultimate values of federal corporate activities or to debate their proper scope. Nor is it the purpose to discuss the immediate utility of the corporate form for activities of the government. The present monograph has been confined within more modest limits. It was designed to examine the influence of state law on national government corporations, and that of government corporations on state law. This task necessarily included a study of the problems created for and by government corporations whose activities bring them into conflict with state authority. It also involved an estimation of the advisability of using state law for the chartering of a government corporation. In addition it has been necessary to inquire into the significance of the corporate form qua form as a device for minimizing the difficulties in carrying on federal activities in forty-eight different jurisdictions. It was the further purpose to study state enabling legislation in order to discover whether any character-

istic design had been imprinted upon it by government corporations, and to examine devices for administrative cooperation used by state officers when dealing with federal corporate officials.

Even a cursory examination of the material considered in this monograph will reveal that the government corporation has not contributed much that is new towards solving the complications of the federal system as it is understood in the United States. Neither has it developed unique devices for simplifying the problem of surmounting state barriers.

Contrary to the expectation of some observers, the corporate device did not create a separate personality, distinct from the national government. A separate personality never came into existence which could deal with the states as though the government corporation were not the United States. Government corporations had difficulties in remaining incognito analogous to those encountered by ruling monarchs who have been equally loathe to be separated from their prerogatives. Government corporations never quite lose their appearance of being the government of the United States in disguise. The ambiguous situation has kept alive the question of the extent to which they ought to be subjected to state domination and control. The New Deal government corporation did not solve the underlying historical problem of functioning under a federal system.

A considerable portion of the blame can be attributed to the shortsighted attitude of many of the corporate administrators. They insisted upon claiming every possible exemption from state law to which they believed the government of the United States was entitled upon grounds of strict legal theory. They therefore engendered long controversies with state attorneys general, state labor departments and state public service commissions, many of which ended in the courts. For example, it is difficult to see to what extent the activities of the T.V.A. would actually have been hampered had it complied with a state's workmen's compensation law instead of carrying on extended litigation to avoid conformance with it. The Home

Owners' Loan Corporation was equally shortsighted in resisting the application of local garnishment statutes. Likewise, it is difficult to conceive how the payment of state income taxes on the part of their employees could have hampered the activities of government corporations. Many of these employees were advised by counsel to the corporations to claim exemption. If one of the conceivable purposes of the corporate form was to free the corporation from the government, the attitude of many administrators militated against the possibility of such an advantage. Those who looked to the government corporation as a method for setting up a "yard stick" with which to measure the efficiency of the government as against private business were hindered in making such a comparison because of the limited view of many of the administrators. Apart from other considerations, the insistence on as many exemptions as possible from state regulation and taxation, resulted in a failure to place federal corporations on a plane of equality with private business.

The blame can be shared by the General Accounting Office of the United States and the United States Department of Justice. For these offices consistently advised the corporations to stand on their strict legal prerogatives and to resist most attempts at taxation and regulation. The Comptroller General on at least one occasion refused to permit a government corporation to pay a local fee which even it considered that it ought to pay.

Some blame can also be laid at the doors of Congress. For the situation is aggravated by the failure of the legislature to be precise in expressing its views. It has rarely stated with complete clarity what relationship ought to exist between a government corporation and a state. The explanation for this is probably that Congress had no clear cut reasons in the first instance for setting up the corporations. Where the idea for a particular corporation was conceived in a government department or by an administration adviser the motivation was probably a desire for freedom from regulation and control by the Comptroller General and others. They did not often think in

advance of the necessity for setting up standards and procedures for dealing with the localities. They were stirred into action only after some of the Federal Subsistence Homesteads and Rural Rehabilitation Corporations were confronted with the very real danger that children living in their projects might be prevented from attending local schools. The Resettlement Administration which was at one period the supervising unit for these corporations then became interested in finding a solution to the joint problem of local taxation and exclusive jurisdiction. Resettlement Administration thereupon urged Congress to pass legislation which would permit the making of payments in lieu of taxes to localities. This legislation was passed, specifically reserving to the states, in addition, jurisdiction in civil and criminal matters. The United States Housing Corporation, one of the World War government corporations, had been given the power to make payments in lieu of taxes almost two decades earlier. Congress had to relearn that lesson.

In allocating the blame, the federal courts should not be exempted. On the whole, the courts were too jealous of the prerogatives of the national government to treat its government corporations as separate entities. In general they only permitted state taxation or regulation of such agencies when Congressional consent could be found. They did not help by developing any realistic tests based on actual interference with federal activities. The only safe generalization that can be made is that when Congress has given a specific exemption from state taxation the courts have always upheld the will of Congress. Nevertheless, the resultant pattern of cases is very confused.

For all these reasons government corporations operating in the states have at least as many problems to solve as other federal governmental activities doing the same type of work. In addition they have to settle the problems peculiar to the corporate form, such as state franchise taxes on corporations, and regulations against foreign corporations.

A new set of difficulties becomes apparent when the problem is approached from another angle. In what way has the existence of federal governmental corporations affected the states themselves? Seen from the viewpoint of state legislatures there seems to be a supreme unconcern for the form in which a governmental activity has been cast. State legislation refers interchangeably to federal agencies, instrumentalities, corporations and departments. Administrators of states who have cooperated with government corporation officials in an exchange of information, in written agreements, and memoranda of understanding have been merely carrying on activities already familiar to the political science student. Federal governmental departments had paved the way for this type of cooperation. Besides, the states have not reacted especially to the policy of leadership taken by government corporations in affecting state legislation. There was no difference in this respect between the activities of the Federal Housing Administration which is non-corporate and the activities of the Home Owners' Loan Corporation which is corporate.

Government officials have been faced with the necessity of removing legal obstacles which made states ineligible under the terms of federal law to secure assistance from the central government. Federal agencies both corporate and non-corporate have exerted pressure on state legislatures to remove such obstructions. Energetic federal administrators engaged in initiating a large spending program quickly, have exerted their influence because they wished their program to proceed as speedily as possible and because they have desired to make good records for themselves.

The fundamental question therefore is: can the device of the government corporation be helpful to the national government when it engages in enterprises in new fields and seeks to operate within the forty-eight states? Those who have looked for a special magic in the corporate form must confess themselves disappointed. There is no necromancy in the corporate form per se. If a solution is to be found it has been demon-

strated thus far that neither the government corporations nor the courts will find it. It must be sought in clarifying legislation. When Congress has learned to be precise in formulating its desires, and has thought out what relation the state ought to bear to a national government corporation, then the corporation will become a more useful device for the federal system.

TABLE OF CASES CITED

- Alward v. Johnson*, 282 U. S. 509 (1930).
Arizona v. California, 283 U. S. 423 (1930).
Baltimore National Bank v. State Tax Commission of Maryland, 297 U. S. 209 (1936).
Brush v. Commissioner of Internal Revenue, 300 U. S. 352 (1937).
Butler Bros. Shoe Co. v. U. S. Rubber Co., 156 Fed. 1 (1907).
Central Market, Inc. v. King (H. O. L. C., Garnishee), 272 N. W. 244 (1937) (Neb.), 302 U. S. 687 (1937).
Clallam County, Washington v. United States and United States Spruce Production Corporation, 283 Fed. 645 (1922), 263 U. S. 341 (1923).
Clinton v. State Tax Commission et al., 71 P. (2) 857 (1937) (Kan.) Re-hearing denied, October 16, 1937.
The Collector v. Day, 11 Wall. 113 (1870).
Commonwealth Finance Corporation v. Landis (Emergency Fleet Corporation, Garnishee), 261 Fed. 440 (1919).
Crook, Horner and Co. v. Old Point Comfort Hotel Co., 54 Fed. 604 (1893).
Dallas Joint Stock Land Bank of Dallas v. Ballard et al., 74 S. W. (2) 297 (1934) (Tex.).
Dallas Joint Stock Land Bank of Dallas v. Dickson et al., 74 S. W. (2) 300 (1934) (Tex.).
Dicks v. Dicks, 170 S. E. 245 (1933) (Ga.).
Easton v. Iowa, 188 U. S. 220 (1903).
Ellingson et ux. v. Iowa Joint Stock Land Bank of Sioux City, Iowa, 264 N. W. 516 (1936) (S. D.).
Federal Land Bank of New Orleans v. Crosland, 261 U. S. 374 (1923).
Federal Land Bank of New Orleans et al. v. Tatum et al., 164 So. 319 (1935) (Miss.).
Federal Land Bank of Spokane v. Statelen et al., 70 P. (2) 1053 (1937) (Wash.).
Federal Land Bank of St. Louis v. Priddy, 295 U. S. 229 (1935).
First National Bank of San Jose v. State of California et al., 262 U. S. 366 (1923).
Gill v. Reese et al., 4 N. E. (2) 273 (1936) (Ohio).
Graves Bros. Inc. v. Lasley et al., 78 S. W. (2) 810 (1935) (Ark.).
Graves, Governor of Alabama, et al. v. Texas Company, 298 U. S. 393 (1936).
Haines et al. v. Lone Star Shipbuilding Co. (United States Shipping Board Emergency Fleet Corporation, Garnishee) 110 A. 788 (1920) (Pa.).
H. O. L. C. v. Hardie and Caudle, 100 S. W. (2) 238 (1936) (Tenn.).
Helvering, Commissioner of Internal Revenue v. Powers, Executor, 293 U. S. 214 (1934).
Helvering, Commissioner v. Therrell, 303 U. S. 218 (1938).
Helvering, Commissioner, etc. v. Gerhardt, 304 U. S. 405 (1938).
Home Federal Savings and Loan Association et al. v. Tobin, Tenn. Sup. Ct. (Jan. 30, 1937).

172 GOVERNMENT CORPORATIONS AND STATE LAW

- H. O. L. C. v. Anderson*, 64 P. (2) 14 (1937) (Kan.).
- Hopkins Federal Savings and Loan Association et al. v. Cleary et al.*, 296 U. S. 315 (1935).
- H & P Paint Supply Co. Inc. v. Ortloff*, 289 N. Y. Supp. 367 (1936).
- Hunt, Governor of Arizona et al. v. United States*, 278 U. S. 96 (1928).
- Indian Territory Illuminating Oil Co. v. Board of Equalization of Tulsa County*, 288 U. S. 325 (1933).
- In re Town of Highlands*, 22 N. Y. Supp. 137 (1892).
- Johnson v. Maryland*, 254 U. S. 51 (1920).
- Knox National Farm Loan Association et al. v. Phillips*, 300 U. S. 194 (1937), 54 Oh. App. 334 (1936).
- Leggett v. Federal Land Bank of Columbia, S. C.*, 167 S. E. 557 (1933) (N. C.).
- Leuthold v. Des Moines Joint Stock Land Bank of Des Moines, Iowa*, 266 N. W. 450 (1936) (Minn.).
- Lowe v. Lowe*, 133 A. 729 (1926) (Md.).
- M. G. West Co. v. Johnson, State Treasurer et al.*, 66 P. (2) 1211 (1937) (Cal.) Cert. denied, 302 U. S. 638 (Mem.).
- McCarthy v. United States Shipping Board Merchant Fleet Corporation*, 53 F. (2) 923 (1931) Cert. denied, 285 U. S. 547 (1932).
- McCulloch v. Maryland*, 4 Wheaton 316 (1819).
- McMahon v. Polk*, 73 N. W. 77 (1897) (S. D.).
- Metcalf and Eddy v. Mitchell, Administratrix*, 269 U. S. 514 (1926).
- National Bank v. Commonwealth*, 9 Wall. 353 (1869).
- Newcomb et al. v. Inhabitants of Rockport et al.*, 66 N. E. 587 (1903) (Mass.).
- New York ex rel. Rogers v. Graves*, 299 U. S. 401 (1937).
- Ohio v. Helvering, Commissioner of Internal Revenue et al.*, 292 U. S. 360 (1934).
- Ohio v. Thomas*, 173 U. S. 276 (1899).
- Parker v. Mississippi State Tax Commission*, 174 So. 567 (1937) (Miss.) Cert. denied, 302 U. S. 742 (1937).
- Panhandle Oil Co. v. Mississippi ex rel. Knox, Attorney-General*, 277 U. S. 218 (1928).
- Pembina Consolidated Silver Mining and Milling Co. v. Pennsylvania*, 125 U. S. 181 (1888).
- People ex rel. O'Keefe v. Graves et al.*, 253 N. Y. App. Div. 91 (3rd Dept.) Affirmed 278 N. Y. 221 (1938), Cert. granted, No. 478, U. S. Sup. Ct. (Dec. 19, 1938).
- Pomeroy v. State Board of Equalization et al.*, 45 P. (2) 316 (1935).
- Posey v. Tennessee Valley Authority*, 93 F. (2) 726 (1937).
- Railroad Co. v. Peniston*, 18 Wall. 5 (1873).
- Rockwell v. Independent School District*, 202 N. W. 478 (1925) (S. D.).
- Rolland et al. v. School District No. 4 of Dakota County et al.*, 271 N. W. 805 (1937) (Neb.).
- R. F. C. v. Central Republic Trust Co. et al.*, 17 F. Supp. 263 (1936).
- Salas v. U. S.*, 234 Fed. 842 (1916).
- Schlosser v. Welsh*, 5 F. Supp. 993 (1934).

- School District No. 20 of Pennington County *v.* Steele, 195 N. W. 448 (1923) (S. D.).
- Sinks *v.* Reese, 19 Ohio St. 306 (1869).
- South Carolina *v.* United States, 199 U. S. 437 (1905).
- State Tax Commission of Maryland *v.* Baltimore National Bank, 180 A. 260 (1935) Cert. granted, 296 U. S. 538 (1935).
- State *ex rel.* Cleary *et al.* *v.* Hopkins Street Building and Loan Association *et al.*, 257 N. W. 684 (1934) (Wis.), 296 U. S. 315 (1935).
- State *ex rel.* Lyle *et al.* *v.* Willett *et al.*, 97 S. W. 299 (1906) (Tenn.).
- Surplus Trading Co. *v.* Cook, Sheriff, 281 U. S. 647 (1930).
- Taber, Treasurer of Payne County, Oklahoma *v.* Indian Territory Illuminating Oil Co., 300 U. S. 1 (1937).
- Trinity Farm Construction Co. *v.* Grosjean, 291 U. S. 466 (1934).
- Tagge *et al.* *v.* Gulzow *et al.*, 271 N. W. 893 (1937) (Neb.).
- Thomson *v.* Pacific R. R., 9 Wall. 579 (1869).
- Tirrell *v.* Johnston, At. Gen. of N. H. *et al.*, 293 U. S. 533 (1934).
- Twin Falls National Bank *v.* Reed, 44 Idaho 573 (1927).
- United States *v.* California, 297 U. S. 175 (1936).
- United States *v.* Cordy, Comptroller of Treasury of Md., 58 F. (2) 1013 (1932).
- United States *v.* Lewis *et al.*, 10 F. Supp. 471 (1935).
- United States *v.* Walter, 263 U. S. 15 (1923).
- Van Cott *v.* Utah State Tax Commission, 79 P. (2) 6 (1938), Cert. granted, No. 491, U. S. Sup. Ct. (Jan. 3, 1939).
- Works and Rhea *v.* Shaw (Mims, Garnishee), 156 So. 81 (1934) (La.).

APPENDIX I

Legal/NRM :A
Langston Project
729281 s/18/38

March 3, 1938

My dear Commissioner Hazen:

Allow me to refer to your letter of February 17 addressed to the Federal Emergency Administrator of Public Works in which you request that a payment in lieu of taxes with respect to the Langston project be made to the District of Columbia under the provisions of section 2 of an act approved June 29, 1936, Public No. 837, 74th Congress.

Pursuant to the provisions of the United States Housing Act of 1937, the President, by Executive Order No. 7732, effective November 1, 1937, transferred all of the projects, assets and activities of the Housing Division of the Federal Emergency Administration of Public Works to this Authority. The Langston project in the District of Columbia was included in such transfer.

Section 2(12) of the United States Housing Act of 1937 provides: "The term 'State' includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States." Section 5(e) of the said Act provides that all property of this Authority shall be exempt from all taxes now or hereafter imposed by the United States or by any State, county, municipality or other local taxing authority. Section 13 (c) provides that this Authority may enter into agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof with respect to any real property owned by the Authority.

Representatives of this Authority have conferred with you, Colonel Daniel I. Sultan and other representatives of the Board of Commissioners in regard to a payment in lieu of taxes by this Authority to the District of Columbia for services rendered by the District of Columbia to the Langston project and its tenants. As a result of such conferences, the following agreement has been reached:

1. The District of Columbia will supply to the Langston project and to the inhabitants thereof all of the services which are

rendered to other property owners or inhabitants of the District of Columbia, the cost of which is ordinarily defrayed by ad valorem real estate taxation, including but not limited to the following: fire and police protection, educational facilities, street lighting, street cleaning and garbage and trash removal to the extent authorized by law.

2. This Authority shall pay to the District of Columbia a sum in lieu of any ad valorem taxation to be assessed or levied against the real estate included in the Langston project to be computed at the rate of Two Thousand Nine Hundred Twenty-Five Dollars (\$2,925) per annum.

3. This payment in lieu of taxes shall commence to accrue from the date the first tenant moves into the Langston project and shall be made during the month of March of each calendar year, the first payment shall be prorated to March 1, 1939 and shall be made during the month of March, 1939.

4. The payment of this sum in lieu of taxes shall be made only from the income derived by this Authority from the operation of the Langston project.

Please indicate the acceptance of this agreement on behalf of the Board of Commissioners of the District of Columbia by signing the three enclosed counterparts of this letter in the place designated and return them to this office.

The cooperation of you and your associates in the negotiation of this agreement is very much appreciated.

Faithfully yours,

NATHAN STRAUS,
Administrator

Mr. Melvin C. Hazen,
President,
Board of Commissioners of the
District of Columbia
Washington, D.C.
Accepted:

Melvin C. Hazen, President, Board of
Commissioners of the District of Columbia

APPENDIX II

TENNESSEE VALLEY AUTHORITY and

CONTRACT FOR A PROGRAM OF COOPERATIVE HEALTH WORK FOR THE PROTECTION OF THE HEALTH OF EMPLOYEES OF THE AUTHORITY AND OF LOCAL COMMU- NITIES FROM HEALTH HAZARDS CREATED BY OPERATIONS OF THE AUTHORITY

THIS CONTRACT, made and entered into this — day of —, 1937, by and between the TENNESSEE VALLEY AUTHORITY, a corporation created by the Act of Congress known as the Tennessee Valley Authority Act of 1933, hereinafter referred to as "Authority," and THE STATE HEALTH DEPARTMENT OF THE STATE OF _____, hereinafter referred to as "Department,"

WITNESSETH :

WHEREAS, the Authority is now, and during the term of this agreement will be, engaged in extensive activities and operations within _____

_____ in the State of _____ : and

WHEREAS, the carrying on of such activities results in the movement of large units of population into said county or counties, and thereby increases the intensity of health hazards among the employees of the Authority, as well as generally within the communities affected; and

WHEREAS, the creation of reservoirs by the Authority and the impounding of waters therein, seriously intensifies within the communities affected the problem of malaria control and may adversely affect conditions of water supply, sewage and other waste disposal systems within such communities; and

WHEREAS, the Authority is under the obligation to provide reasonably adequate health service to its employees residing within the above named counties, and is also under an obligation to adopt reasonable measures to protect the residents of said counties from the effects of adverse environmental conditions created by the Authority; and

WHEREAS, to attempt to discharge such obligations directly within said counties by personnel employed by the Authority would be uneconomical and inefficient, and would tend to result in conflicts of jurisdiction and authority; and

WHEREAS, both the Authority and the Department are desirous of entering into an agreement that will enable the Department to perform these necessary services for and on behalf of the Authority without imposing any additional financial burden upon the Department;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereinafter contained, the parties hereto covenant and agree as follows:

1. The Department agrees that it will establish such programs of public health service in the counties named in this contract as may be necessary for the control of unusual health hazards resulting from the operations of the Authority, and that it will perform on behalf of the Authority such other services as may be jointly agreed upon by the Department and the Director of Health of the Authority. The counties included in this contract are as follows:

2. The Department agrees to employ for the performance of services contemplated by this contract only such persons as are jointly approved by the Department and the Director of Health of the Authority.

3. The Department further agrees that it will adopt a budget to be agreed upon by the Department and the Director of Health of the Authority for the services included in this contract during the period of the contract, and that said budget when adopted will become a part of this contract.

4. The Department further agrees that it will submit to the Director of Health of the Authority such progress and financial

reports as may be jointly agreed upon by the Department and the Director of Health of the Authority.

5. The Authority agrees that during the term of this contract it will contribute at the rate of _____ dollars per annum to the budget included within the terms of this contract, said contribution to be payable in monthly installments to the Department at the close of each calendar month upon receipt of properly certified invoice in triplicate, reciting that the services to be performed by the Department under the terms of this contract have been duly performed during said month; that payment therefor has not been received, and that the amount of the invoice is just and correct.

6. The term of this contract shall be for the fiscal year ending June 30, 1938, and thereafter from year to year until terminated by notice in writing by either party to the other thirty (30) days before the end of any fiscal year.

7. The Department agrees to submit at the end of the fiscal year to the Director of Health of the Authority, a financial statement certifying the expenditures made according to the terms of the budget included as a part of this contract, and to return to the Authority any unexpended balance which may have accrued to the commitments of the Authority.

8. It is expressly understood and agreed that in the event the Department fails to perform any of the covenants, or comply with any of the terms and conditions of this contract, the Authority shall, from the date of such failure of performance or breach of covenant, be relieved of all liabilities and obligations imposed upon it under the terms of this agreement.

9. This agreement may be terminated and cancelled by either party upon giving ninety (90) days' notice in writing to the other party of the intention to so terminate.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first above written.

TENNESSEE VALLEY AUTHORITY

By _____
Chairman of the Board

THE STATE HEALTH DEPARTMENT
OF THE STATE OF _____

By _____

APPENDIX III

A. INCORPORATION DIRECTLY BY ACT OF CONGRESS

THE RECONSTRUCTION FINANCE CORPORATION was created directly by act of Congress as a body corporate: 47 Stat. 5; 15 U.S.C.A. 601-617 (January 22, 1932). Its powers were affected by the following laws:

47 Stat. 709, 15 U. S. C. A. 605 (a), (b), 608, 609 (July 21, 1932); 47 Stat. 725, 15 U. S. C. A. 602 (July 22, 1932); 47 Stat. 795 (February 4, 1933); 48 Stat. 1, 12 U. S. C. A. 51 (d) (March 9, 1933); 48 Stat. 31, 7 U. S. C. A. 605 (May 12, 1933); 48 Stat. 55, 15 U. S. C. A. 722 (May 12, 1933); 48 Stat. 119, 15 U. S. C. A. 605-605 (j) (June 10, 1933); 48 Stat. 128, 12 U. S. C. A. 1463 (June 13, 1933); 48 Stat. 141, 15 U. S. C. A. 605 (June 14, 1933); 48 Stat. 195, 40 U. S. C. A. 412, 15 U. S. C. A. 609 (b) (June 16, 1933); 48 Stat. 211, 49 U. S. C. A. 265 (June 16, 1933); 48 Stat. 257, 12 U. S. C. A. 1131 (i) (June 16, 1933); 48 Stat. 318, 15 U. S. C. A. 601 (a), 604 (a), 613 (a) (January 20, 1934); 48 Stat. 589, 15 U. S. C. A. 605 (k) (April 13, 1934); 48 Stat. 969, 15 U. S. C. A. 606 (a) (June 16, 1934); 48 Stat. 1105, 15 U. S. C. A. 605 (f), 605 (i), 606 (b), 606 (f)-606 (i) (June 19, 1934); 48 Stat. 1198, 15 U. S. C. A. 605 (June 21, 1934); 49 Stat. 1, 15 U. S. C. A. 601 (b), 603 (a), 604 (b), 605, 605 (e), (1), (m), 606 (a), (b), 607 (a), 613 (b) (January 31, 1935); 49 Stat. 424, 46 U. S. C. A. 922 (June 27, 1935); 49 Stat. 684, 12 U. S. C. A. 228 (August 23, 1935); 49 Stat. 796, 15 U. S. C. A. 606 (j) (August 24, 1935); 49 Stat. 1185, 12 U. S. C. A. 51 (e), 51 (f) (March 20, 1936); 49 Stat. 1191 (April 10, 1936); 49 Stat. 1363, 7 U. S. C. A. 903 (May 20, 1936); 50 Stat. 5, 15 U. S. C. A. 613 (c) (January 26, 1937); 50 Stat. 19, 15 U. S. C. A. 605 (k)-(1) (February 11, 1937); 50 Stat. 703, 12 U. S. C. A. 1095 (August 19, 1937) and the act of February 24, 1938.

The purpose of the corporation is to provide facilities for financial institutions to aid in financing agriculture, commerce and industry, to purchase preferred stocks of banks and to make loans. The corporation reports directly to the President of the United States who appoints all the directors. The capital stock is \$500,000,000 fully paid in by the Secretary of the Treasury.

THE TENNESSEE VALLEY AUTHORITY was created directly by act of Congress as a body corporate, 48 Stat. 58; 16 U.S.C.A. 831-831 (dd) (May 18, 1933), and was amended by 49 Stat. 1075; 16 U.S.C.A. 831 (c)-831 (cc) (August 31, 1935). It has a fourfold purpose (1) The operation of government-owned property in the

Muscle Shoals area. (2) Use of power as a "yardstick." (3) Experimentation to reduce the cost of production and distribution of fertilizers. (4) Planning for the whole watershed area including reforestation, erosion, land use, and so forth. The Authority is under the direct supervision of the President of the United States and the three directors report directly to him. The project is financed through Congressional allotments and has no capital stock.

FEDERAL DEPOSIT INSURANCE CORPORATION was created directly by act of Congress as a body corporate, 48 Stat. 162; 12 U.S.C.A. 264 (June 16, 1933). This act was further amended, 49 Stat. 684; 12 U.S.C.A. 228 (August 23, 1935). The purpose of the corporation is to insure the deposits of all banks which are entitled to the benefits of insurance under the law. This corporation reports directly to the President of the United States. The board of directors consists of three persons, two of whom are chosen by the President of the United States with the advice and consent of the Senate, the third member is the Comptroller of the Currency. The Treasury of the United States has contributed \$150,000,000 of the capital stock and the remaining \$139,299,556.99 is subscribed by the Federal Reserve Bank. On December 31, 1937 this corporation had insured deposits in 13,853 of the 15,450 operating banks in the United States.

FEDERAL FARM MORTGAGE CORPORATION was created directly by act of Congress as a body corporate, 48 Stat. 344; 12 U.S.C.A. 1020-1020 (h) (January 31, 1934). The chief purpose is to aid in financing the lending operations of the federal land banks and the Land Bank Commissioner. By the Emergency Farm Mortgage Act of 1933 the mortgages and credit instruments previously taken up by the Land Bank Commissioner, were transferred to the corporation. It has an authorized capital stock of \$200,000,000 which is owned by the United States. The board of directors of three consists of the Governor of the Farm Credit Administration, the Secretary of the Treasury and the Land Bank Commissioner. This corporation is supervised by the Farm Credit Administration.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION was created directly by act of Congress as a body corporate, 48 Stat. 1246, 1256; 12 U.S.C.A. 1725-1730 (June 27, 1934) and amended by 49 Stat. 293; 12 U.S.C.A. 1422 (May 28, 1935). The purpose

of this corporation is to insure investments in thrift and home financing institutions. It is under the supervision of the Federal Home Loan Bank Board members of which compose its board of trustees. The \$100,000,000 which represents the capital stock of the corporation was obtained by the sale of its stock to the Home Owners' Loan Corporation.

FARMERS' HOME CORPORATION was created directly by act of Congress as a body corporate, 50 Stat. 522; 7 U.S.C.A. 1014 (July 22, 1937) and placed in the Department of Agriculture. The corporation is to have a nominal capital stock in an amount determined and subscribed for by the Secretary. The board of directors is to consist of three persons in the employ of the Department of Agriculture.

FEDERAL CROP INSURANCE CORPORATION was created directly by Title V of the Agricultural Adjustment Act of 1938 as a body corporate (February 16, 1938). The purpose of the corporation is to provide for wheat crop insurance for the 1939 harvest and for research to determine whether insurance could be given to other crops. The corporation was placed in the Department of Agriculture. The act authorized subscription by the United States of \$100,000,000 worth of capital stock. It provided in addition that not more than \$20,000,000 be appropriated during the fiscal year which began June 30, 1938.

UNITED STATES HOUSING AUTHORITY was created directly by act of Congress as a body corporate, 50 Stat. 888; 42 U.S.C.A. 1401-1430 (September 1, 1937), and placed in the Department of the Interior theoretically under the supervision of the Secretary of that Department. By Executive Order 7732 (October 27, 1937) all the housing and slum clearance projects of the Federal Emergency Administration of Public Works, together with the unexpended balance for this purpose were transferred to the Authority. The purpose is to assist the states to provide adequate dwellings for families of low income. The Authority has a capital stock of \$1,000,000 subscribed by the United States. The sum of \$26,000,000 was authorized to be appropriated for the fiscal year ending June 30, 1938. The Authority may issue \$500,000,000 in bonds by July 1, 1939. These obligations are to be exempt from all taxes except surtaxes, estate taxes, inheritance or gift taxes

by the United States or any state. All these obligations are guaranteed as to principal and interest by the United States.

DISASTER LOAN CORPORATION was created directly by act of Congress as a body corporate, 50 Stat. 19; 15 U.S.C.A. 605 (k) (February 11, 1937). It is to exist until dissolved by further act of Congress. The purpose of the corporation is to provide loans made necessary by floods or other catastrophes of 1936, 1937, 1938. The corporation is managed by officers and agents of the R.F.C. The capital stock which is not to exceed \$20,000,000 is to be paid for by the R.F.C. out of unexpended balance of \$50,000,000 which the R.F.C. is authorized to lend for catastrophe relief by Sec. 1 of 49 Stat. 1232; 15 U.S.C.A. 605 (k) (April 17, 1936).

INLAND WATERWAYS CORPORATION was created directly by act of Congress, 43 Stat. 360; 49 U.S.C.A. 152-156 (June 3, 1924). Its power was further changed by 44 Stat. 1261; 49 U.S.C.A. 154 *et seq.* (February 28, 1927) and by 45 Stat. 978; 49 U.S.C.A. 152, 153 (May 29, 1928). The purpose of the corporation is to foster and develop freight transportation by water over inland routes. The stock of the corporation is all owned by the government of the United States. It is under the supervision of the War Department.

TEXTILE FOUNDATION INC. was created directly by act of Congress, 46 Stat. 539; 15 U.S.C.A. 501-505 (June 10, 1930). The actual process of incorporation was effected with the first meeting of the Board of Directors on June 11, 1930. The corporation was organized for scientific and economic research for the benefit and development of the textile industry. The corporation is under the supervision of a Board of Directors consisting of the Secretary of Commerce, the Secretary of Agriculture, and three persons chosen by the President for a four-year term. It does not receive funds from the United States Government but must, however, report to Congress and the President once a year and give them a confidential report of their activities and a detailed statement of receipts and expenditures.

WAR FINANCE CORPORATION was created directly by act of Congress as a body corporate, 40 Stat. 506; 15 U.S.C.A. 331-346 (April 5, 1918). In accordance with a later act of Congress, 43 Stat. 14; 15 U.S.C.A. 371 (February 20, 1924) the corporation

ceased to receive applications on November 20, 1924. The corporation had as its purpose the giving of financial support to industries whose "operations were necessary or contributory to the prosecution of the war, and to banking institutions which aided in financing these institutions." The entire capital stock of \$500,000,000 was subscribed to by the United States Government. The process of liquidation is under the supervision of the Secretary of the Treasury. At the present time \$10,000 of the capital stock remains outstanding.

CORPORATION OF FOREIGN SECURITY HOLDERS was directly created by act of Congress, 48 Stat. 74; 15 U.S.C.A. 77 (bb) (May 27, 1933). It was authorized to be financed by the R.F.C. and to be under the supervision of the Federal Trade Commission. It never actually came into existence because although Congress had created a body corporate, the law said the corporation was not to come into existence until the President should proclaim the corporation, which he has never done.

B. INCORPORATION BY FEDERAL OFFICERS UNDER SPECIFIC DIRECTION OF CONGRESS. NO FURTHER AUTHORITY NEEDED

FEDERAL LAND BANKS were organized by federal officers (Federal Farm Loan Board) under the specific direction and authority of an act of Congress, 39 Stat. 360; 12 U.S.C.A. 671-83 (July 17, 1916). The power of this act has been broadened by several amendments contained in Emergency Farm Mortgage Act of 1933, 48 Stat. 31; 12 U.S.C.A. 1018 (May 12, 1933), the Farm Credit Act of 1933, 48 Stat. 257; 12 U.S.C.A. 1131, 1134 (June 16, 1933), the Federal Farm Mortgage Corporation Act, 48 Stat. 344; 12 U.S.C.A. 1020 (January 31, 1934), the Farm Credit Act of 1935, 49 Stat. 313; 12 U.S.C.A. 1016 (June 3, 1935), and the Farm Credit Act of 1937, 50 Stat. 703; 12 U.S.C.A. 1020 (August 19, 1937). The federal land banks have funds made available to them by the Federal Farm Mortgage Corporation. The federal land banks are under the direct supervision of the Farm Credit Administration. These banks may make loans (a) to purchase land for agricultural purposes only, (b) to buy equipment, fertilizer and livestock necessary for the proper operation of the mortgaged farm, (c) to buy buildings, (d) to liquidate indebtedness incurred

for agricultural purposes prior to January 1, 1933, (e) to provide the owner of the mortgaged land with funds for general agricultural uses. On December 31, 1936 the United States directly owned fifty-two per cent of the stock. Regardless of stock ownership in each of the twelve banks the United States appoints four of the seven directors.

HOME OWNERS' LOAN CORPORATION was organized by federal officers (Federal Home Loan Bank Board) under specific direction of sec. 4 of 12 U.S.C.A. 1461-68 of the Home Owners' Loan Act, 48 Stat. 128; 12 U.S.C.A. 1461-68 (June 13, 1933) and amended by act of Congress, 48 Stat. 643; 12 U.S.C.A. 347, 355, 394, 1020 c, 1430, 1463-68 (April 27, 1934), further amended by the National Housing Act, 48 Stat. 1246; 12 U.S.C.A. 371, 1131 (gg), 1422, 1426, 1430, 1430 (a), 1431, 1462, 1463, 1701-32, 48 Stat. 1264; 41 U.S.C.A. 22 (June 27, 1934), and still further amended by 49 Stat. 293, secs. 22-31; 12 U.S.C.A. 1703, 1709-11, 1716-17, 1725-27, 1729 (May 28, 1935). The purpose of the Home Owners' Loan Corporation was to grant long-term mortgage loans at low interest rates to those in need of funds for the retention or recovery of their homes and unable to get the money through normal banking channels. The corporation is under the supervision of the Federal Home Loan Bank Board, but is actually directly responsible to the President of the United States. On June 12, 1936 the corporation terminated its lending activities. The Secretary of the Treasury purchased the \$200,000,000 capital stock.

REGIONAL AGRICULTURAL CREDIT CORPORATIONS were organized by officers of the R.F.C. under the specific direction of the Emergency Relief and Construction Act, 47 Stat. 709; 15 U.S.C.A. 605 (a) (July 21, 1932). Twelve such corporations were formed with twenty-two branch offices. The purpose of these corporations was to make direct loans to farmers and stockmen for agriculture and the raising of livestock. The Regional Agricultural Credit Corporations were taken from the jurisdiction of the R.F.C. and placed under Farm Credit Administration by Executive Order effective May 27, 1933. The Farm Credit Administration is now in the process of liquidating these corporations. All the stock was owned by the R.F.C. Pursuant to the authority exercised under the Farm Credit Act of 1937, a new corporation known as the Regional

Agricultural Credit Corporation of Washington, D.C., was created September 30, 1937 to take over the assets and liabilities of these Regional Agricultural Credit Corporations.

TWELVE FEDERAL HOME LOAN BANKS were organized by the Federal Home Loan Bank Board under specific direction and authority so to do given in the Federal Home Loan Bank Act, 47 Stat. 725; 12 U.S.C.A. 1421-1449 (July 22, 1932) and as amended by the Home Owners' Loan Act of 1933, 48 Stat. 128; 12 U.S.C.A. 1424, 1461-1468 (June 13, 1933) and as further amended by an act of Congress 48 Stat. 643; 12 U.S.C.A. 347, 355, 394, 1020c, 1430, 1463, 1463a, 1463b, 1464-5, 1467-8 (April 27, 1934) and as further amended by the National Housing Act, 48 Stat. 1246; 12 U.S.C.A. 1701 *et seq.* (June 27, 1934) and an act of Congress, 49 Stat. 293; 12 U.S.C.A. 1430 (a) (May 28, 1935). The purpose of these banks is to establish a credit reserve for the thrift and home-financing institutions of the United States. They are under the supervision of the Federal Home Loan Bank Board. The capital stock is subscribed by institutions taken into membership, and by the Secretary of the Treasury. As of June 30, 1936 the Secretary of the Treasury had invested \$124,741,000 and the member institutions, \$26,745,700 in the capital stock. The Board of Directors of each Federal Home Loan Bank is made up of four directors appointed by the Federal Home Loan Bank Board and eight chosen by member institutions. The Board to designate one director of the bank to be chairman and one to be vice-chairman.

TWELVE PRODUCTION CREDIT CORPORATIONS were created by the Governor of the Farm Credit Administration under specific direction and authority of the Farm Credit Act of 1933, 48 Stat. 257; 12 U.S.C.A. 1131 (June 16, 1933). These corporations were established to assist in organizing and supervising the operations of the production credit associations. The associations provide short-term credit for general agricultural purposes. The corporations themselves do not make loans, they merely act in a supervisory capacity in providing the necessary funds for capitalizing production credit associations as they are needed. The capital stock is subscribed by the Governor of the Farm Credit Administration and held by him on behalf of the United States Government. Four of the seven directors of each corporation are appointed by the United States Government. Farm Credit Administration is the supervising agency.

NATIONAL FARM LOAN ASSOCIATIONS were first set up by members of the Federal Farm Loan Board in 1916 under the specific direction and authority of the Federal Farm Loan Act, 39 Stat. 360; 12 U.S.C.A. 711-722 (July 17, 1916). They were brought under the control and supervision of the Farm Credit Administration upon the establishment of that body. The associations are cooperative credit organizations through which federal land bank loans are normally made. On December 31, 1937 there were 4,681 such organizations. Under the provisions of the Farm Credit Act of 1935 the declaration and payment of dividends is made subject to the approval of the Land Bank Commissioner.

NATIONAL MORTGAGE ASSOCIATIONS are organized by the National Housing Administrator, under specific authority and direction of Title III of the National Housing Act, 48 Stat. 1246; 12 U.S.C.A. 1716-1723 (June 27, 1934), as amended by acts of Congress, 49 Stat. 293; 12 U.S.C.A. 1716 (d)-1717 (May 28, 1935), 49 Stat. 684 (August 23, 1935). The law provides that any five natural persons may apply for authority to establish a national mortgage association, and at the time of such application shall transmit to the administrator articles of association. If the administrator is of the opinion that the incorporators transmitting the articles of association are satisfactory in all respects, he shall issue a certificate of approval and the association shall become, as of that date, a corporation.

CENTRAL BANK FOR COOPERATIVES and the twelve district Banks were organized by the Governor of the Farm Credit Administration under the specific direction and authority of the Farm Credit Act of 1933, 48 Stat. 257; 12 U.S.C.A. 1134 (b)-1134 (j) (June 16, 1933). The purpose of these corporations is to make loans to national, regional and local farmers' cooperative associations, and to cooperatives furnishing farm business services. The Farm Credit Act of 1933 provides that the capital stock paid into the banks for cooperatives shall be in such amounts as the Governor of the Farm Credit Administration determines is necessary. As of December 31, 1937 the United States had subscribed to \$144,500,000 in stock and the thirteen banks for cooperatives \$3,552,300. As in other units under the supervision of the Farm Credit Administration four out of the seven directors are chosen by the government of the United States.

FEDERAL INTERMEDIATE CREDIT BANKS were organized by members of the Federal Farm Loan Board under the specific direction and authority of an act of Congress, 42 Stat. 1454; 12 U.S.C.A. 1021-1026, 1031-1034 (March 4, 1923), and amended by the Federal Farm Mortgage Corporation Act, 48 Stat. 344; 12 U.S.C.A. 1020 (January 31, 1934), and the Farm Credit Act, 49 Stat. 313; 12 U.S.C.A. 1051 (c) (June 3, 1935). They made loans to and discount paper for production credit associations, the banks for cooperatives, state and national banks, agricultural credit corporations, and livestock loan companies. They are under the supervision of the Farm Credit Administration. Four of the seven directors of each of the twelve banks are appointed by the governor.

FEDERAL SAVINGS AND LOAN ASSOCIATIONS were organized and given charters by the Federal Home Loan Bank Board under specific direction of sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 128; 12 U.S.C.A. 1464 (June 13, 1933) as amended by 48 Stat. 643; 12 U.S.C.A. 1463 (April 27, 1934). The purpose in establishing the Federal Savings and Loan System was to provide local mutual thrift and home financing institutions. Both the Treasury and the Home Owners' Loan Corporation have made investments in these associations, as have private interests. They are under the supervision of the Federal Home Loan Bank Board. Such associations may raise their capital only in the form of payments on such shares as are authorized in their charter. Secretary of the Treasury may subscribe for preferred shares in such associations. He is permitted to subscribe at the request of the Board and not more than \$100,000 to any one association. The aggregate amount of shares held by the Secretary of the Treasury was not to exceed at any time the aggregate amount of shares held by all other shareholders.

FEDERAL PRISON INDUSTRIES, INC. was incorporated by the President of the United States through Executive Order No. 6917 (December 11, 1934) under specific authority and direction of 48 Stat. 1211; 18 U.S.C.A. 744 (i)-744 (n) (June 23, 1934). The purpose of this corporation is to provide employment for inmates of correctional and penal institutions under the direct control of the United States. It is under the supervision of the Department of Justice. It is financed by Congressional appropriation.

C. INCORPORATION UNDER STATE LAW OR UNDER THE LAWS OF THE DISTRICT OF COLUMBIA

THE R.F.C. MORTGAGE COMPANY was organized under the laws of Maryland on March 14, 1935. It was formed to carry out 49 Stat. 1; 15 U.S.C.A. 606 (i) (January 31, 1935). The purpose of the corporation is to aid in the reestablishment of a market for mortgages on business property, when credit is not otherwise available. The R.F.C. supervises the corporation and also owns the stock of the corporation.

COMMODITY CREDIT CORPORATION was organized under a Delaware charter on October 16, 1933, pursuant to Executive Order 6340 (October 16, 1933) to carry out the purposes of the Agricultural Adjustment Act, 48 Stat. 31; 7 U.S.C.A. 601-619 (May 12, 1933); N.I.R.A., 48 Stat. 195; 15 U.S.C.A. 702 (June 16, 1933); F.E.R.A. of 1933, 48 Stat. 55; 15 U.S.C.A. 721-728 (May 12, 1933); R.F.C. Act, 47 Stat. 5; 15 U.S.C.A. 601-617 (January 22, 1932); 49 Stat. 4; 15 U.S.C.A. 702 (Note) (January 31, 1935) extended its existence to April 1, 1937 as an agency of the United States. 50 Stat. 5; 15 U.S.C.A. 702 (Note) (January 26, 1937) extended its life as a governmental agency to June 30, 1939, unless earlier dissolved by the President. The purpose of this corporation is to make loans to producers to finance the marketing of agricultural commodities. The present capital is \$100,000,000, \$3,000,000 subscribed by the Secretary of Agriculture and \$97,000,000 by the R.F.C. The additional capital was subscribed by 49 Stat. 1191; 45 U.S.C.A. 186 (April 10, 1936). The Reconstruction Finance Corporation is the supervising agency for the corporation. The original incorporators were Henry A. Wallace, Henry Morgenthau, Jr., and Oscar Johnson.

FEDERAL SURPLUS COMMODITIES CORPORATION was originally formed as the Federal Surplus Relief Corporation. It was formed by the Federal Emergency Relief Administration in the state of Delaware (October 4, 1933). On November 18, 1935, at a meeting of its Board of Directors its name was changed to the Federal Surplus Commodities Corporation. Its principal purpose at the present time is to assist the Agricultural Adjustment Administration in its program for the removal of surplus products, by distributing such products to states relief agencies. This corporation is

under the supervision of the Department of Agriculture. It was first formed to carry out the purposes of The Agricultural Adjustment Act, 48 Stat. 31; 7 U.S.C.A. 601-619 (May 12, 1933), Title II of the N.I.R.A., 48 Stat. 195; 15 U.S.C.A. 702 (June 16, 1933) and the F.E.R.A. of 1933, 48 Stat. 55; 15 U.S.C.A. 721-728 (May 12, 1933). Other powers were later added by 49 Stat. 774; 7 U.S.C.A. 612 (c) (August 24, 1935) as amended by 50 Stat. 323; 7 U.S.C.A. 612 (c) (June 28, 1937).

EXPORT-IMPORT BANK OF WASHINGTON was created on February 12, 1934 by the Secretary of State and of Commerce in the District of Columbia pursuant to Executive Order 6581 (February 2, 1934) for the purpose of carrying out the intention of sec. 2, Title I of the National Industrial Recovery Act, 48 Stat. 195; 15 U.S.C.A. 702 (June 16, 1933). The purpose of the bank is to aid in financing the exchange of commodities between the United States and any foreign country or its insular possessions. The Export-Import Bank is under the supervisory control of an inter-departmental board of trustees made up of officers from the Reconstruction Finance Corporation, the Departments of Commerce, State, Treasury, and Agriculture. The stock is owned partly by the United States and partly by the R.F.C. A second Export-Import Bank of Washington, D.C., which had been formed under Ex. Order 6638 (March 9, 1935) in the District of Columbia, and was dissolved as of Ex. Order 7365 (May 7, 1936) which ordered that after June 30, 1936, the bank be liquidated and that all of the commitments of the bank be taken over by the Export-Import Bank of Washington.

ELECTRIC HOME AND FARM AUTHORITY was first incorporated by the three directors of the T.V.A. under the laws of the state of Delaware (January 13, 1934) pursuant to Executive Order 6514 (December 19, 1933) and for the purpose of carrying out the National Industrial Recovery Act, 48 Stat. 195; 15 U.S.C.A. 702, 40 U.S.C.A. 401 (June 16, 1933). It was later incorporated in the District of Columbia, August 1, 1935 and the Delaware corporation was dissolved. By Executive Order 7139 (August 12, 1935) it was designated as an agency of the United States. 49 Stat. 1186; 15 U.S.C.A. 702 (March 31, 1936) continued the Electric Home and Farm Authority as an agency of the United States until February 1, 1937. 50 Stat. 5; 15 U.S.C.A. 702 (Note) (January 26, 1937)

authorized the further continuance of the Electric Home and Farm Authority as an agency of the United States until June 30, 1939, or such earlier date as the President of the United States may direct by Executive Order. The purpose of the corporation is to aid in the financing, distribution, sale and installation of electric equipment and appliances operated thereby. Their field of operation has been extended to cover the whole United States. It is under the supervision of the Reconstruction Finance Corporation but reports directly to the President of the United States. Capital stock is owned by the government of the United States.

PUBLIC WORKS EMERGENCY HOUSING CORPORATION was incorporated by the Public Works Administration in Delaware on October 28, 1933, and an amended certificate of incorporation was filed November 16, 1933; its purpose was to carry out Title II of the N.I.R.A., 48 Stat. 195; 40 U.S.C.A. 401 (June 16, 1933). It was designed to be under the supervision of the Public Works Administration. This corporation was abolished and liquidated as of August 14, 1935, by the filing of a certificate of surrender before payment of any part of the capital stock. The original incorporators were Harold Ickes, Frances Perkins, and Robert D. Kohn.

PUBLIC WORKS EMERGENCY LEASING CORPORATION was incorporated in Delaware by Secretary of the Interior (January 2, 1934) to carry out the purposes of Title II of the N.I.R.A. and all acts amendatory thereto and any Executive Orders pursuant thereto; 48 Stat. 195; 40 U.S.C.A. 401 (June 16, 1933). It was under the supervision of the Public Works Administration. This corporation filed a certificate of dissolution with the Secretary of State of Delaware on January 2, 1935, thus ending its existence. Three shares of stock without par value composed the entire capital stock. The original incorporators were Harold L. Ickes, Oscar L. Chapman, and Theodore A. Walters.

TENNESSEE VALLEY ASSOCIATED COOPERATIVES was organized by the Tennessee Valley Authority in Tennessee during 1934. It was designed to develop rural cooperatives in the Tennessee Valley area. According to the *Annual Reports* of the T.V.A., the Authority and the T.V.A. Associated Cooperatives still cooperate. It is under the supervision of Works Progress Administration and the Farm Security Administration. It received its funds from the Federal

Emergency Relief Administration which gave it in the first instance to the state of Tennessee for this purpose.

RURAL REHABILITATION CORPORATIONS were organized by the Federal Emergency Relief Administration in various states including Delaware, Arkansas, Nebraska, and District of Columbia, from 1934 to 1936. The policy of the Federal Emergency Relief Administration contemplated federal supervision and control over expenditures and activities. The program was transferred to the Resettlement Administration which was established by Ex. Order 7027 (April 30, 1935). The Comptroller General of the United States took the position that these funds could only be expended directly. Resolutions introduced by each corporation in which they transferred their assets to the United States with the understanding that these funds were to be used in the particular state and if not used, returned to the state. By September 30, 1937, thirty-four of the corporations had already done this. December 31, 1936 all functions of Resettlement went over to the Department of Agriculture. About one-half of these corporations have already been liquidated.

FEDERAL SUBSISTENCE HOMESTEADS CORPORATION was organized by the Secretary of the Interior in Delaware, November 21, 1933. The charter of incorporation for the parent corporation refers to no special law that it was carrying out. Separate subsidiary Subsistence Homesteads Corporations were established for each project to aid the redistribution of the overbalance of population in industrial centers by making loans for and otherwise aiding in the purchase of subsistence homesteads. The corporations are under the supervision of the Farm Security Administration which is the successor to the Resettlement Administration. This was accomplished by Memorandum No. 732 dated September 1, 1937, issued by the Secretary of Agriculture. Nominal stock issue of \$10,000 was provided in the charter of the parent corporation. Funds were actually obtained through Congressional appropriation. Original incorporators were Harold L. Ickes, Oscar L. Chapman, and M. L. Wilson.

UNITED STATES RUSSIAN BUREAU, INC. was incorporated by the War Trade Board in Connecticut during 1918 for the purpose of purchasing and shipping supplies to overthrow the regime which came into existence by the November Revolution of 1917 in Russia.

The capital stock of \$5,000,000 was owned by the United States Government. The corporation is no longer active.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION was created by the Shipping Board in the District of Columbia, April 16, 1917, to carry out the purposes of 39 Stat. 729 (1916). Its powers were further increased on July 11, 1917 when the President of the United States delegated to the corporation, Ex. Order 2664 (July 11, 1917), the powers conferred on him by the Emergency Shipping Act, 40 Stat. 182 (June 15, 1917). The purpose was to acquire and build a merchant marine adequate to maintain an army in France. The \$50,000,000 stock was owned by the government of the United States. The corporation was under the supervision of the Department of Commerce until it was dissolved and all its records and books were taken over by the United States Maritime Commission according to the provisions of 49 Stat. 1985; 46 U.S.C.A. 1119 *et seq.* (June 29, 1936). Yearly deficits were made up by annual appropriations.

UNITED STATES GRAIN CORPORATION was organized by the Food Administration under Executive Order 2681 (August 14, 1917) in Delaware to carry out the terms of 40 Stat. 276 (August 10, 1917). Its purpose was to store and sell grain for purposes of the war. Its powers were later enlarged so that it was used as an agency of the American Relief Administration for the relief of starving people in Europe. All stock was owned by the United States Government. This corporation has not been active for some time.

UNITED STATES SPRUCE PRODUCTION CORPORATION was incorporated in Washington, August 20, 1918, by the Division of Aircraft Production to carry out the purposes of 40 Stat. 845, 888 (July 9, 1918). Its purpose was to secure timber for airplanes. All the stock was owned by the United States Government. It is no longer active.

UNITED STATES SUGAR EQUALIZATION BOARD, INC. incorporated in Delaware (July 31, 1918) by the Food Administration to carry out the purposes of 40 Stat. 276 (August 10, 1917). All stock was owned by the United States Government. It is no longer active.

UNITED STATES HOUSING CORPORATION was organized by the Department of Labor under the laws of the state of New York

(July 8, 1918) to carry out the purposes of 40 Stat. 550 (May 16, 1918). Its purpose was to provide housing for workers in basic war industries. The \$100,000,000 was subscribed by the government of the United States. It was under the supervision of the Department of Labor. The expenses since 1919 have been met by annual appropriation. It is no longer active.

PANAMA RAILROAD Co., privately created and incorporated in the state of New York on April 7, 1849, was bought in 1904 by the government of the United States. It operates a railroad, a steamship line, terminal facilities, and manufactures many products which it sells at its own stores. It is under the supervision of the War Department. The capital stock is owned by the United States.

ALASKA RAILROAD, INC. was privately incorporated in the state of Washington. It was bought in 1915 by the United States Government as the nucleus of a system to be constructed in the Territory of Alaska under a law signed March 12, 1914, 38 Stat. 305. It has been under the supervision of the Department of Interior ever since. The railroad operates river boats, a hotel, and maintains a hospital.

VIRGIN ISLANDS COMPANY was incorporated under the laws of the Virgin Islands in 1934 to develop and carry out a plan for the economic rehabilitation of the people of the Island. The company is engaged in the production of rum, and the restoration of lands to sugar cane production, has set up a chicken farm and raises vegetables for the local market. It is under the general auspices of the Department of the Interior. During the fiscal year ending June 30, 1936, Federal Emergency Relief Administration grants to the Islands totaled \$126,000, Works Progress Administration grants \$459,000, and Public Works Administration allotments totalled \$2,072,264.

INDEX

- Administrative cooperation, state-federal, 14
 by informal means, 148-154
 by formal agreements, 154-161
 facilitated by federal law
 interchange of information, 147
 joint participation of authorities, 146
 payments in lieu of taxes, 70, 148, 161-164
- Alaska Railroad, Inc., 12 n., 194
- Alward *v.* Johnson, 61 n., 171
- Arizona *v.* California, 100 n., 171
- Arnold, Thurman, 165
- Atkinson Company *v.* State Tax Commission. See Guy F. Atkinson Company *v.* State Tax Commission of Oregon, *et al.*
- Attorney-General of the United States, 25 n., 55, 57, 115 n.
- Austin, Senator Warren R., 30
- Baltimore National Bank *v.* State Tax Commission of Maryland, 67, 171
- Bank for Cooperatives, 48, 49 n., 63, 77, 87, 88, 91
- Bank of North America, 12 n.
- Birdzell, L. E., 127 n., 128 n., 131
- Blandford, John B., Jr., 144, 152 n., 153 n., 156 n., 159 n.
- Brandeis, Justice Louis D., 65 n.
- Brownlow, Louis, 28
- Brush *v.* Commissioner of Internal Revenue, 47 n., 82, 83, 84, 171
- Bureau of the Budget, 12, 16
- Bureau of Internal Revenue, 12
- Butler Bros. Shoe Co. *v.* United States Rubber Co., 56 n., 171
- Butler, Justice Pierce, 64
- California Conservation Corps, 86
- Cardozo, Justice Benjamin N., 35, 65, 67, 68, 106
- Central Bank for Cooperatives, 187
- Central Market, Inc. *v.* King (H. O. L. C., Garnishee), 34, 110 n., 171
- Chapman, Oscar L., 191
- Cheatham, Elliott E., 46 n.
- Clallam County, Washington *v.* United States and United States Spruce Production Corporation, 31, 44, 59, 60, 61, 171
- Clark, Jane P., 160 n.
- Clinton *v.* State Tax Commission *et al.*, 77, 87, 171
- Collector *v.* Day. See The Collector *v.* Day
- Columbia Institution for the Deaf, 19
- Commonwealth Finance Corporation *v.* Landis (Emergency Fleet Corporation, Garnishee), 111 n., 171
- Commodity Credit Corporation, 17, 27, 37, 38 n., 49 n., 86, 88, 94, 189
- Comptroller General of the United States, 17, 28, 44, 54, 65, 167, 192
- Corporation of Foreign Security Holders, 184
- Coughlin, Father Charles E., 25, 29
- Crabtree, Dr. James A., 159 n., 160 n.
- Crook, Horner and Co. *v.* Old Point Comfort Hotel Co., 115 n., 171
- Dallas Joint Stock Land Bank of Dallas *v.* Ballard *et al.*, 98 n., 171
- Dallas Joint Stock Land Bank of Dallas *v.* Dickson *et al.*, 98 n., 171
- Dicks *v.* Dicks, 115 n., 171
- Dimock, Marshall E., 38, 39
- Director of the Budget, 28
- Disaster Loan Corporation, 183
- Dixon, Kathryn G., 155 n.
- Dowling, Noel T., 46 n.
- Draper, Earle S., 160 n.
- Easton *v.* Iowa, 103, 171
- Electric Home and Farm Authority, act establishing, 27, 37, 38 n., 147, 190
 regulation of, 104
 taxation of, 53, 54, 55
 taxation of employees of, 86
- Emmerich, Herbert, 30, 31, 32, 33, 34, 37 n.

- Ellingson *et ux. v. Iowa Joint Stock Land Bank of Sioux City*, Iowa, 98, 171
- Evans, Peyton R., 99, 100 n.
- Exemption by states from,
deficiency judgments, 125
mortgage moratorium laws, 98, 99, 124
property execution judgments, 125
public service commission control, 124
stock security commission control, 124
taxation, 124
- Exemption of state agencies dealing with government corporations from,
bank examinations, 125
banking commission, securing approval of, 126
collateral requirements, 125
par value sale of public securities, 126
public advertising, 126
security for deposits, 125
stock issuance, limitations on, 125
- Export-Import Bank of Washington, 16, 190
- Farm Credit Administration, 30, 181, 184, 185, 186, 187
lobbying by, 134 ff.
regulation of, 97-100
taxation of, 32, 49, 62 n., 65
taxation of employees of, 74 n., 76, 81, 86, 88, 93
- Farm Security Administration, 191, 192
- Farmers' Home Corporation, 182
- Fearon, Hon. George R., 135 n.
- Federal Crop Insurance Corporation, 182
- Federal Deposit Insurance Corporation,
act establishing, 36, 181
cooperation with state agencies, 146, 147, 150-151
exemption of state groups dealing with, 125
lobbying by, 127-131, 133
mandatory appointment as Receiver, 126
state legislation, permissive, 124
taxation of employees of, 86, 88, 94
- Federal Emergency Relief Administration, 60 n., 86, 189, 191, 192, 194
- Federal Farm Loan Board, 23, 36, 139, 142, 184, 187, 188
- Federal Farm Mortgage Corporation, 16, 71, 86, 88, 93, 134, 181, 184
- Federal Home Loan Banks, 88, 93, 105, 106, 122, 131, 133, 134, 137, 186
- Federal Home Loan Bank Board
cooperation with states, 148 n., 150, 154-155
lobbying by, 133-137
relation to corporations, 182, 185, 186, 188
state legislation, permissive, 139, 142
- Federal Housing Administration, 13, 17, 81, 86, 87, 88, 140, 141, 143, 169
- Federal Intermediate Credit Banks, 12 n., 50 n., 63, 66, 77, 86, 87, 88, 93, 188
- Federal Land Banks, 12 n., 49 n., 56, 77, 81, 86, 87, 88, 90, 93, 95, 97, 98, 139, 142, 184
- Federal Land Bank of New Orleans *v. Crosland*, 32, 44, 50, 51, 171
- Federal Land Bank of New Orleans *et al. v. Tatum et al.*, 98 n., 171
- Federal Land Bank of St. Louis *v. Priddy*, 99, 108, 109, 111, 171
- Federal Land Bank of Spokane *v. Statelen et al.*, 32, 55, 56, 171
- Federal Prison Industries, Inc., 188
- Federal Savings and Loan Associations, 50, 94, 106 n., 138, 142, 155 n., 188
- Federal Savings and Loan Insurance Corporation, 17, 86, 88, 138, 148, 149, 150, 181
- Federal Subsistence Homesteads Corporation, 55, 58 n., 60, 95, 115, 168, 192
- Federal Surplus Commodities Corporation, 16, 86, 154, 189
- Federal Surplus Relief Corporation. *See* Federal Surplus Commodities Corporation
- Fesler, James W., 135, 136
- Field, Oliver P., 28, 36 n.
- First National Bank of San Jose *v. State of California et al.*, 171
- Fly, James L., 33 n., 101 n., 110 n., 137, 153 n.

- Food Administration Grain Corporation, 12. *See* United States Grain Corporation
- Frear, Representative James A., 70
- French, Patterson H., 16, 27, 28, 31, 33 n., 37
- General Accounting Office, 16, 72, 167
- Gill *v. Reese et al.*, 34, 110 n., 111 n., 171
- Glick, Philip M., 24
- Gormley, R. E., 133
- Graves Bros., Inc. *v. Lasley et al.*, 112 n., 171
- Graves, Governor of Alabama *et al. v. Texas Company*, 32, 45, 64, 171
- Guy F. Atkinson Company *v. State Tax Commission of Oregon et al.*, 92
- Haines *et al. v. Lone Star Shipbuilding Co. (United States Shipping Board Emergency Fleet Corporation, Garnishee)*, 111 n., 171
- Hale, Robert L., 46 n.
- Hazen, Melvin C., 176
- Helvering, Commissioner, etc. *v. Gerhardt*, 72, 84, 171
- Helvering, Commissioner of Internal Revenue *v. Powers, Executor*, 45, 77, 79, 88, 171
- Hoisington, R. M., 152 n.
- Home Federal Savings and Loan Association *et al. v. Tobin*, 58 n., 171
- Home Owners' Loan Corporation, 13, 16, 72, 169, 182, 188
act establishing, 185
regulation of, 33, 95, 100, 103-104, 110-112
state legislation, permissive, 122, 123, 139, 142, 143
taxation of, 32, 49 n., 50 n., 51-52, 66 n.
taxation of employees of, 74, 76-77, 78 n., 79, 86, 87, 88, 90, 91, 93
- H. O. L. C. *v. Anderson*, 32, 52
- H. O. L. C. *v. Hardie and Caudle*, 34 n., 110 n., 171
- H & P Paint Supply Co., Inc. *v. Ortloff*, 110, 172
- Hopkins Federal Savings and Loan Association *et al. v. Cleary et al.*, 106, 107, 172
- Hunt, Governor of Arizona *et al. v. United States*, 99 n., 172
- Hutto, Jackson S., 146, 151 n.
- Ickes, Harold, 191
- Indian Territory Illuminating Oil Co. *v. Board of Equalization of Tulsa County*, 61 n., 172
- Inland Waterways Corporation, 12 n., 79, 89, 183
- In re Town of Highlands*, 115 n., 172
- Johnson, Oscar, 189
- Johnson *v. Maryland*, 99 n., 172
- Johnson, Treasurer of California *et al. v. M. G. West Co.*, 63
- Joint Stock Land Banks, 12 n., 62 n., 86, 88, 93, 97-99, 109
- Key, V. O., Jr., 148 n.
- Keynes, John Maynard, 11
- Keyserling, Leon H., 132 n., 141, 163 n., 164 n.
- Knox National Farm Loan Association *et al. v. Phillips*, 34, 35, 172
- Kohn, Robert D., 191
- Lamb, G. W., 135 n.
- Leggett, Eugene S., 135, 136
- Leggett *v. Federal Land Bank of Columbia, S. C.*, 103, 172
- Lehman, Governor Herbert H., 134, 137
- Leuthold *v. Des Moines Joint Stock Land Bank of Des Moines, Iowa*, 98, 99, 172
- Lobbying by government corporations, 127, 143, 145
- Long, Huey, 144
- Lowe *v. Lowe*, 115 n., 172
- Ludlow, Representative Louis, 70
- McCarl, John R., 28, 54, 55
- McCarthy *v. United States Shipping Board Merchant Fleet Corporation*, 111 n., 112 n., 172
- McCulloch *v. Maryland*, 44, 59, 172
- McMahon *v. Polk*, 115 n., 172
- Macdonald, Austin F., 148 n.
- McDiarmid, John, 28
- McGuire, O. R., 47 n., 54 n.
- McLean, Representative Donald H., 38
- McReynolds, Justice James C., 61
- Metcalf and Eddy *v. Mitchell, Administratrix*, 46 n., 172

- M. G. West Co. *v.* Johnson, State Treasurer *et al.*, 63, 172
- Morgan, Arthur, 158
- Morgenthau, Henry, Jr., 189
- National Agricultural Credit Corporations, 12 n., 186
- National Bank *v.* Commonwealth, 46 n., 172
- National Emergency Council, 135, 136
- National Farm Loan Associations, 12 n., 62 n., 187
- National Mortgage Associations, 187
- Newcomb *et al. v.* Inhabitants of Rockport *et al.*, 115 n., 172
- New York *ex rel.* Rogers *v.* Graves, 45, 75, 76, 78, 81, 87, 89, 90, 172
- Ohio *v.* Helvering, Commissioner of Internal Revenue *et al.*, 45, 53, 172
- Ohio *v.* Thomas, 99 n., 103, 172
- Oppenheimer, Monroe, 71 n., 101, 148 n., 163 n.
- Panama Railroad Co., 12 n., 75, 80, 194
- Panhandle Oil Co. *v.* Mississippi *ex rel.* Knox, Attorney General, 44, 45, 61, 62, 63, 64, 65, 66 n., 172
- Parker *v.* Mississippi State Tax Commission, 77 n., 81, 89, 90, 172
- Pembina Consolidated Silver Mining and Milling Co. *v.* Pennsylvania, 56, 172
- People *ex rel.* O'Keefe *v.* Graves *et al.*, 78 n., 91, 172
- Poletti, Hon. Charles, 136 n.
- Pomeroy *v.* State Board of Equalization *et al.*, 78, 88, 172
- Porter, Russell, 159 n.
- Posey *v.* Tennessee Valley Authority, 33, 102, 172
- J. S. Powell *v.* Collector of Revenue, 89
- President's Committee on Administrative Management, 16, 27, 28, 31, 135 n.
- President of the United States, Executive Orders of, 17, 24 n., 28, 37, 38 n., 147, 182, 185, 188, 189, 190, 191, 192, 193
- Production Credit Corporation, 49 n., 63, 77, 78, 86, 87, 88, 93, 186
- Public Works Administration, 71, 79, 89, 140, 141, 191, 194
- Public Works Emergency Housing Corporation, 37, 191
- Public Works Emergency Leasing Corporation, 3, 26, 37, 191
- Railroad Co. *v.* Peniston, 46 n., 61 n., 172
- Reconstruction Finance Corporation, 16, 27, 39, 183, 185, 189, 190, 191
- act establishing, 15, 38, 180
- cooperation with state agencies, 132-133, 146, 151
- exemption of state groups dealing with, 125
- lobbying by, 133
- state legislation, permissive, 121, 122 n., 124, 139, 142
- regulation of, 113
- taxation of, 49, 50 n., 60 n., 67 n., 68, 69
- taxation of employees of, 74, 78, 86, 87, 88, 89, 90, 91, 93, 94
- R. F. C. *v.* Central Republic Trust Co. *et al.*, 39, 113, 172
- R. F. C. Mortgage Company, 17, 33, 39, 47, 48, 54, 57, 58, 59, 86, 189
- Reed, Stanley, 15, 47 n.
- Regional Agricultural Credit Corporations,
- act establishing, 185-186
- exemption from taxes, 49
- regulation of, 104, 105
- taxation of employees of, 74, 78, 90, 91, 93, 94
- Regulation of government corporations,
- attachment, 95, 105, 107, 108, 109
- conversion of state building and loan associations, 95, 106
- denial of tenants' civil rights, 94, 114-117
- escheat laws, 95, 103
- foreign corporation laws, 94, 104, 105
- garnishment, 33, 34, 95, 107, 111, 112
- labor codes, 95. *See* workmen's compensation laws
- mortgage moratorium laws, 95, 97-100, 124
- power to sue, 110
- pure food act, state, 103
- registration statute, 104

- third party proceedings, 95, 107
- workmen's compensation laws, 33, 95, 101, 102, 166
- zoning requirements, 95, 100
- Resettlement Administration, 28 n., 86, 88
 - act establishing, 192
 - cooperation of states with, 123
 - jurisdiction of states, and, 113-114 n., 115-116, 168
 - payment in lieu of taxes, 70, 71 n., 148 n., 161-163
 - regulation of, 101
- Roats, O. D., 134, 135 n.
- Robinson, Harold, 52 n., 100 n., 101 n.
- Rockwell *v.* Independent School District, 115 n., 172
- Rogers *v.* Graves. *See* New York *ex rel.* Rogers *v.* Graves
- Rolland *et al.* *v.* School District No. 4 of Dakota County *et al.*, 117 n., 172
- Roosevelt, President Franklin D., 29, 84, 85
- Rural Electric Administration, 81, 86, 88, 94
- Rural Rehabilitation Corporations,
 - act establishing, 192
 - denial of tenants' civil rights, 116, 168
 - exemption from taxes, 49, 58 n., 60 n.
 - regulation of, 95, 96
- Salas *v.* U. S., 112, 172
- Schall, Senator Thomas D., 25, 29
- Schlosser *v.* Welsh, 59 n., 172
- School District No. 20 of Pennington County *v.* Steele, 115 n., 173
- Sinks *v.* Reese, 115 n., 173
- Smith, Brabner J. W., 141
- Smithsonian Institute, 19 n.
- Snell, Representative Bertrand H., 70
- Sobel, Nathan D., 134, 135 n.
- South Carolina *v.* U. S., 45, 46, 47, 63, 77, 172
- State *ex rel.* Baumann *v.* Bowles, 90
- State *ex rel.* Lyle *et al.* *v.* Willet *et al.*, 115 n., 172
- State legislation, permissive
 - banks may invest in HOLC bonds, 122 n.
 - borrowing from RFC authorized,
 - board of public affairs may borrow, 121 n.
 - county courts may borrow, 121
 - governors may borrow, 121
 - highway commissions may borrow, 121 n.
 - school districts may borrow, 121
 - towns and counties may borrow, 121
 - water control districts may borrow, 121
 - building and loan associations may become Home Loan Bank members, 122; may convert into federal associations, 122, 123 n.; may invest in HOLC bonds, 121, 122 n.
 - cooperatives may assist in extending TVA, 123
 - federal building and loan associations may reconvert into state associations, 123
 - highway commissioner may accept road from TVA, 123
 - insurance companies may become Federal Home Loan Bank members, 122 n.
 - localities may accept HOLC bonds in payment of special assessments, 123; may contract for electricity with TVA, 123
 - rehabilitation corporations may convey assets to RA, 123
 - state savings and loan associations may share offices with federal associations, 124, 146
 - state examiners may furnish reports to RFC and FDIC, 124, 146
- State legislation, special privileges. *See* Exemption
 - mandatory appointment of FDIC as Receiver, 126
 - power of eminent domain granted, 126
 - special notice prior to mortgage cancellation, 126
- State Tax Commission of Maryland *v.* Baltimore National Bank, 66, 67 n., 172
- Stone, Justice Harlan F., 46 n., 83, 108
- Stoke, H. W., 46 n.
- Straus, Nathan, 176
- Surplus Trading Co. *v.* Cook, 115 n., 173
- Sutherland, Justice George, 75, 80, 82
- Taber, Treasurer of Payne County, Oklahoma *v.* Indian Terri-

- tory Illuminating Oil Co., 61, 173
- Tagge *et al.* v. Gulzow *et al.*, 116, 173
- Taxation of government corporations.
- See* Exemptions
- corporation excise tax, 31, 32
- corporate income tax, 43, 48, 124
- fees for commencement of suit, 43, 48, 71
- franchise tax, 14, 33, 43, 47, 57-61
- general property tax, 31, 43, 60 n.
- income of employees taxed, 74, 75, 77, 79, 81, 85-94
- license tax, 48, 55, 56, 58
- mortgage privilege tax, 49 n.
- mortgage registration tax, 32, 49 n., 52
- motor vehicle tax, 13, 43, 61, 66
- privilege tax, 121
- property taxes, 61, 67, 124
- qualifying tax, 32, 43, 48, 53-55
- recording tax, 43, 49 n., 50, 52, 124
- sales tax, 13, 32, 43, 48, 61-64, 66
- stamp tax, 13, 32, 43, 59, 51-52
- Tennessee Valley Authority, 18, 140, 144, 190, 191
- act establishing, 23, 31, 147, 180
- cooperation with state agencies, 147, 151-153, 156-161, 163, 177-179
- lobbying by, 137
- regulation of, 33, 95, 101-103, 110 n., 166
- state legislation, permissive, 123, 124
- taxation of, 31, 64, 66
- taxation of employees of, 76, 88
- Tennessee Valley Associated Co-operatives, 58 n., 191
- Textile Foundation, Inc., 183
- The Collector v. Day, 44, 171
- Thomson v. Pacific R. R., 46 n., 61 n., 173
- Thurston, John, 15, 17 n., 44 n., 80
- Trinity Farm Construction Company v. Grosjean, 66 n., 173
- Twin Falls National Bank v. Reed, 56 n., 173
- United States v. California, 46 n., 173
- United States Grain Corporation, 12, 38 n., 193
- United States Housing Authority, 135, 136 n., 141, 161, 163, 164, 182
- United States Housing Corporation, 12, 53, 86, 132, 147, 168, 182, 193
- United States v. Lewis *et al.*, 67 n., 173
- United States Shipping Board Emergency Fleet Corporation, 12, 112, 193
- United States Spruce Production Corporation, 12, 31, 37, 59, 193
- United States Sugar Equalization Board, Inc., 12, 193
- United States Russian Bureau, Inc., 12, 192
- United States v. Walter, 56, 173
- Vance Planche v. Collector of Revenue, 88
- Van Cott v. Utah State Tax Commission, 93
- Van Dorn, Harold A., 12, 14, 17, 26, 34, 59 n.
- Virgin Islands Company, 194
- Wallace, Henry A., 189
- Walter, Theodore A., 191
- War Finance Corporation, 12, 183
- West Co. v. Johnson. *See* M. G. West Co. v. Johnson, State Treasurer *et al.*
- Wilcox, Francis R., 154 n.
- Wilson, M. L., 192
- Woodall, Emery J., 133 n.
- Works and Rhea v. Shaw, 112 n., 173
- Works Progress Administration, 87, 88, 143, 191, 194
- Wyman, Aldrich, 100 n., 101 n.

Ruth Goldstein Weintraub

VITA

THE author of this study was born in New York City on February 15, 1905. She attended the public schools of that city and was graduated from Hunter College in June 1925. From Columbia University she received the M.A. degree in 1927, and from New York University the J. D. degree in 1930. The author of this study was subsequently admitted to practice before the Bar of the State of New York. She returned to Columbia University for further graduate study and attended the seminars of Professors Arthur W. Macmahon, Lindsay Rogers, and Schuyler C. Wallace. She has been a tutor, and then instructor in the Department of Social Science of Hunter College since 1926.

